(21,165.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 158.

J. ALEXANDER CHILES, PLAINTIFF IN ERROR,

vs.

CHESAPEAKE AND OHIO RAILWAY COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF KENTUCKY.

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1 Pleas Before the Honorable the Court of Appeals of Kentucky, at the Capitol, at Frankfort, on the 16th Day of April, 1907.

Appeal from Fayette Circuit Court.

J. ALEXANDER CHILES, Appellant,
vs.
CHESAPEAKE & OHIO RAILWAY COMPANY, Appellee.

Be it remembered that on the 23rd day of November, 1906, the appellant by his attorneys filed in the office of the Clerk of the Court of Appeals a transcript of the record and which is in words and figures as follows:

2 STATE OF KENTUCKY:

Fayette Circuit Court.

Pleas Held Before the Hon. Watts Parker, Judge of the Fayette Circuit Court, on the 22nd Day of May, 1906, and on July 26th, 1906.

Parties:

J. ALEXANDER CHILES, Plaintiff,
vs.
CHESAPEAKE & OHIO RAILWAY COMPANY, Defendant.

Petition. (*No.* 2.)

Be it remembered that heretofore, to-wit: On the 11th day of April, 1905, the plaintiff filed a Petition against the defendant, which is in words and figures as follows:

Petition.

The plaintiff, J. Alexander Chiles, says that the defendant, Chesapeake & Ohio Railway Company, is a corporation duly incorporated by law, and is now and was at the times hereinafter stated engaged in operating a line of railroad from the City of Louisville in the State of Kentucky and the City of Cincinnati in the State of
3 Ohio to the City of Washington, in the District of Columbia, and was then and is now a common carrier engaged in transporting passengers for hire in its cars over said line of railroad; that on the 12th day of April, 1904, the plaintiff purchased, from the defendant corporation at Washington, D. C., for the sum of Fifteen Dollars, ($15.), which he then paid to the defendant, a first-class railroad ticket from Washington, D. C., to Lexington, Kentucky, and under said ticket, he, being an interstate commerce

passenger, was entitled to ride continuously in a first-class car on defendant's line of railroad from Washington, D. C., to Lexington, Kentucky.

Plaintiff states that he boarded the train of defendant's cars at Washington, D. C. and was accepted by defendant as a passenger for such, and assigned to a seat in a first-class car, upon delivery to defendant of his ticket, entitling him to such first-class passage. Plaintiff says that defendant, after accepting his fare, conveyed plaintiff as a first-class passenger in defendant's first-class coach, to Ashland, Kentucky, but upon arriving at Ashland, Kentucky, the defendant declined and refused to further carry this plaintiff as a first-class passenger in defendant's first class coach, but contrary to plaintiff's contractual rights, and against the consent of plaintiff, the agents and employés of the defendant corporation, called to their assistance a police officer, and by threats of violence and by force and violence ejected plaintiff from said car, greatly to the mortification of plaintiff and to his public humiliation, thereby subjecting the plaintiff to intense mental suffering and and to his damage in the sum of Ten Thousand Dollars, ($10,000.-00), for which amount he prays judgment against the defendant, and for his costs herein expended and for all proper relief.

4

B. E. SMITH.
C. J. BRONSTON.
ALLEN & DUNCAN.

The affiant, J. Alexander Chiles, says that he is the plaintiff in the above styled action and that the statements of the foregoing petition are true.

J. ALEXANDER CHILES.

Subscribed and sworn to before before me by J. Alexander Chiles, this 10th day of April, 1905.

LENA MOHR,
Notary Public, Fayette Co., Ky.

My commission expires at the end of the next session of the Senate.

Upon the filing of the foregoing Petition Summons was issued directed to the Sheriff of Fayette County and was afterwards returned by said Sheriff endorsed in words and figures, as follows, to-wit:

5

Sheriff's Return on Summons.

Executed the within summons, April 19, 1905, on the Chesapeake and Ohio Railway Co. by delivering to its chief officer and agent in and for this County, A. J. Mitchell Jr., a true copy thereof.

J. T. WILKERSON, *S. F. C.*,
By FRANK ROGERS, *D. S.*

And afterwards at a Term of Court held for said Circuit on the 8th day of May, 1905, the following order was entered, herein, to-wit:

Answer Filed and Noted.

Comes defendant and files answer herein, which is noted.

The Answer of Defendant filed and noted herein on the 8th day of May, 1906, is in words and figures as follows, to-wit:

Answer.

1. For answer in the above entitled action the defendant, Chesapeake and Ohio Railway Company, denies that under the ticket mentioned in the petition plaintiff was entitled to ride continuously in a first-class car on defendant's line of railroad from Washington, D. C., to Lexington, Kentucky, or that upon arriving at Ashland, Kentucky, the defendant declined or refused to further carry
6 plaintiff as a first-class passenger in defendant's first class coach; or that the agents or employés of defendant called to their assistance a police officer and by threats of violence or by force or violence ejected the plaintiff from the car mentioned and referred to in the petition; or that they ejected plaintiff from said car at all.

2. For further answer said defendant denies that under the ticket mentioned in the pe-ition the plaintiff was entitled to ride continuously in a first-class car on defendant's line of railroad from Washington, D. C., to Lexington, Kentucky; on the contrary, it says that the car in which plaintiff rode from Washington, D. C., to Ashland, Kentucky, was one which did not run to Lexington, Kentucky; that on arriving at Ashland, Kentucky, it was necessary for the plaintiff, in order to reach Lexington, to go into another car, which he did without objection or complaint; that the plaintiff is a colored man, and that the car into which he went of his own volition, as aforesaid, at Ashland, was one which, under the rules and regulations of this defendant, was set apart exclusively for the transportation of white passengers; that when the plaintiff went into said car he was requested by defendant's conductor to go into another car, which was set apart for the exclusive transportation of colored persons, and which was a first-class car and equal in quality, convenience and accommodations to the other first-class cars of the defendant, and to that in which the plaintiff then was; that the plaintiff thereupon
7 refused to leave said car into which he had gone at Ashland and in which he was when requested, as aforesaid, to go into said car set apart for the exclusive transportation of colored persons; that upon said refusal the defendant did call a police officer of the City of Ashland, who took up the plaintiff's baggage and proceeded to said car set apart for the transportation of colored passengers; that plaintiff followed said officer into said car; that no force or violence was used in effecting this removal, and that plaintiff was not mortified or humiliated or subjected to any mental suffering thereby; that this is the ejection complained of in the petition; and that he was transported from Ashland to Lexington, Kentucky, as a first-class passenger in said first-class car set apart for the exclusive accommodation of colored persons. Defendant further says that under the

rules and regulations adopted by it colored persons are and were then carried within the territorial limits of the State of Kentucky in other coaches than those in which white persons are carried, and that there is and then was no difference or discrimination in the quality, convenience or accommodations in the cars or coaches set aside for the exclusive use of the two respective races; and that there was no such difference or discrimination between the car from which plaintiff was required to remove and the car into which he was required to remove on the occasion referred to.

8 Having answered, defendant prays to be hence dismissed, with its costs.

JNO. T. SHELBY,
Attorney for Defendant

And afterwards at a Term of Court held for said Circuit on the 22nd day of May, 1905, the following order was entered, herein, to-wit:

Demurrer to Answer Filed and Noted.

Plaintiff files a general demurrer to the Answer of defendant herein and to each paragraph thereof, which is noted.

Demurrer to Answer.

The Demurrer filed by Plaintiff on the 22nd day of May, 1905, is in words and figures, as follows, to wit:

The plaintiff demurs to the answer of defendant herein, because it does not state facts sufficient to constitute a defense.

Plaintiff also demurs to each paragraph of defendant's answer because they do not state facts sufficient to constitute a defense.

And afterwards at a Term of Court held for said Circuit on the 27th day of November, 1905, the following order was entered, herein, to-wit:

Demurrer Overruled.

9 This cause being heard upon the demurrer of plaintiff to the Answer of defendant herein, and the Court being advised, it is ordered and adjudged by the Court that said demurrer be, and the same is hereby overruled, to which ruling of the Court the plaintiff excepts.

Plaintiff is allowed one week in which to file Reply.

And afterwards at a Term of Court held for said Circuit on the 11th day of December 1905, the following order was entered, herein, to-wit:

Reply Filed and Noted.

Comes plaintiff and files Reply herein, which *are* noted. By consent of parties the affirmative allegations of said Reply are traversed of record.

The Reply of Plaintiff filed and noted herein on the 11th day of December, 1905, is in words and figures as follows, to-wit:

Reply.

The plaintiff for reply to the second paragraph of defendant's answer says he has no knowledge or such information as enables him to form a belief that the car into which the plaintiff
10 went at Ashland, Kentucky, for the purpose of being transported to Lexington was under the rules or regulations of the defendant set apart exclusively for the transportation of white passengers. He denies that the car into which he was requested by defendant's conductor at Ashland, Kentucky, to go into was a first class car, or equal in quality, convenience or accom-odations to the other first class cars of the defendant, or to that in which the plaintiff then was. He says that force and violence was used in effecting his removal from the one car into the other, and that he was mortified, humiliated and subjected to mental suffering by the said removal. He admits that he was transported from Ashland to Lexington, Kentucky, in a car set apart for the exclusive accom-odation for colored persons, but he denies that he was transported as a first class passenger or in a first class car. He says that there was then and is now a difference and discrimination in the quality, convenience and accom-odations in the cars and coaches set aside by the defendant corporation for the exclusive use of the white and black race, and that there was a difference and discrimination between the car from which plaintiff was required to remove and the car into which he was required to remove on the occasion referred to and that the car into which he was removed was not equal either in quality or in accom-odations to the car from which he was removed.

11 C. J. BRONSTON,
B. E. SMITH,
ALLEN & DUNCAN,
Attorneys for Plaintiff.

J. Alexander Chiles, plaintiff in this action, says the statements of the foregoing reply are true.

J. ALEXANDER CHILES.

Subscribed and sworn to before me by J. Alexander Chiles, this 11th day of December, 1905.

JAMES C. ROGERS, *C. F. C. C.*,
By J. H. CARTER, JR., *D. C.*

And afterwards at a Term of Court held for said Circuit on the 18th day of December, 1905, the following order was entered, herein, to-wit:

Ordered that this cause be now placed upon the docket of Common Law Cases for future assignment.

And afterwards at a Term of Court held for said Circuit on the 23rd day of January, 1906, the following order was entered, herein, to-wit:

Assigned.

Ordered that this cause be now assigned for trial on February, 10th, 1906.

12 And afterwards at a Term of Court held for said Circuit on the 16th day of February, 1906, the following order was entered, herein, to-wit:

Assigned.

Ordered that this cause be now continued generally.

And afterwards at a Term of Court held for said Circuit on the 9th day of April, 1906, the following order was entered, herein, to-wit:

Assigned.

Ordered that this cause be now assigned for trial on May 10th, 1906.

And afterwards at a Term of Court held for said Circuit on the 11th day of May, 1906, the following order was entered, herein, to-wit:

Assigned.

Ordered that this cause be now assigned for trial on May 19th, 1906.

And afterwards at a Term of Court held for said Circuit on the 22nd day of May, 1906, the following order was entered herein, to-wit:

13 *Parties Appeared. Jury Appeared.*

Parties appeared and thereupon came the following jury, to-wit: J. M. Hedges, A. B. Lancaster, L. J. Fallon, M. T. Lyle, Roger Wilson, W. I. Hughes, F. R. Davis, T. W. Berkley, Garrett Watts, B. C. Prewitt, H. M. Skillman and George Land, who were duly sworn to try the issue:

Official Stenographer Ordered to Take Evidence.

Miss Mary A. Chiles, the Official Stenographic Reporter of this Court, was directed to take in full, the evidence and proceedings of this trial; the trial progressed and being concluded, the jury retired and returned into Court the following verdict, viz:

Verdict.

"We the jury find for the defendant.

B. C. PREWITT.
GEO. LAND.
T. W. BERKLEY.
J. M. HEDGES.
L. J. FALLON.
W. I. HUGHES.
H. M. SKILLMAN.
R. H. WILSON.
GARRETT WATTS."

Judgment.

Wherefore it is adjudged by the Court that the Petition of
14 the plaintiff be dismissed, and that defendant recover of plaintiff its costs herein expended.

And afterwards at a Term of Court held for said Circuit on the 23rd day of May, 1906, the following order was entered, herein, to-wit:

Motion and Grounds for New Trial Filed and Noted.

Comes plaintiff and moves the Court for a new trial herein and files grounds in support of said motion, which are noted.

The Motion and grounds for a New Trial filed and noted herein on the 23rd day of May, 1906, is in words and figures as follows, to-wit:

Motion & Grounds for New Trial.

The Plaintiff moves the Court to set aside the verdict in this case and grant him a new trial for the following reasons.

1st. Because the verdict is contrary to the law and evidence and is not sustained by the evidence.

2nd. Because the Court over Pl'ff's objection admitted incompetent and irrelevant testimony against the Pl'ff to which he at
15 the time excepted, and refused to admit competent and *revelent* testimony in his behalf to which ruling he at the time objected and excepted.

3rd. Because the Court gave to the jury improper, misleading and erroneous instructions to which the plaintiff at the time objected and excepted.

4th. Because the Court refused to give to the Jury the instructions asked by the plaintiff to which the pl'ff objected and excepted at the time.

5th. Because the verdict is the result of bias and prejudice against

the Pl'ff growing out of his assertion and prosecution of his cause of action in this cause.

ALLEN & DUNCAN.
BRONSTON.
B. E. SMITH,
P. O.

And afterwards at a Term of Court held for said Circuit on the 18th day of June 1906, the following order was entered, herein, to-wit:

Submitted.

This cause is submitted upon the motion of plaintiff for a new trial herein. Plaintiff is allowed two weeks to file brief on said motion.

16 And afterwards at a Term of Court held for said Circuit on the 26th day of July, 1906, the following order was entered, herein, to-wit:

The Court delivered a written opinion herein, which is filed and noted and made part of the record.

Motion for New Trial Overruled.

In accordance with said opinion, it is now ordered and adjudged by the Court that the motion of the plaintiff for a new trial herein be, and the same is hereby overruled, to which ruling of the Court the plaintiff excepts and prays an appeal to the Court of Appeals, which is granted.

Appeal Granted.

The Written Opinion filed and noted herein on the 26th day of July, 1906, is in words and figures as follows, to-wit:

Opinion.

The plaintiff, J. Alexander Chiles, in his petition alleges that the defendant, Chesapeake and Ohio Railway Company is a common carrier,—that the plaintiff bought a ticket from defendant upon which he was entitled to passage from Washington City to Lexington, Kentucky, as a first class passenger—that he boarded defendant's train at Washington City and was carried by defendant as a first class passenger to Ashland, Kentucky, at which place he was required to leave the car in which he was riding. He sues

17 for Ten Thousand Dollars damages.

The defendant denies that it declined to carry plaintiff from Ashland, Kentucky, to Lexington, Kentucky, as a first class passenger, but alleges that at Ashland, Kentucky, a change of cars on the part of plaintiff was necessary as the car in which he had ridden up to that point did not go to Lexington—that the plaintiff is a colored man—that in changing cars at Ashland he entered a car set apart exclusively for white passengers, that defendant's con-

ductor requested him to leave said car and go into the car set apart exclusively for colored passengers, and upon his refusal to do so he was required to go into the last named car, which the defendant alleges, was in all respects as good as the car which plaintiff was required to leave. The plaintiff also charges that he was forcibly ejected from said car, and that the car into which defendant required him to go, did not afford first class accommodations.

The facts appearing from the evidence in the case are not complicated. It appears clearly that at Ashland defendant, in changing cars, offered to go into the white coach, and was notified by one of defendant's employés that he had no right to enter said coach; that the plaintiff thereupon informed this employé that he, the plaintiff, was an "interstate passenger," and had the right to ride in the white coach, and thereupon entered that coach and took his seat. It
18 appears that he was afterwards requested to leave said car, but refused to do so until the employés of the Company demanded that he should quit the car, and that too in a manner, and with such a display of force, that it was apparent that plaintiff would be obliged to comply. There is no evidence whatever that any force was actually applied to the person of the plaintiff. There is some evidence to the effect that a policeman acting under defendant's orders, laid his hand upon Plaintiff's shoulder, but, during the entire transaction, from its beginning to its end, there was no unlawful force used against plaintiff, unless it be that the demand that he should leave the car, backed by the power to enforce a compliance, be held an unlawful violence.

The plaintiff, in his conduct, was guilty of no rudeness, but all the facts show that it was a plain case of a demand on the part of the plaintiff, that he should be permitted to ride in the white car—a demand of the defendant that plaintiff should ride in the other car—and a threat on the part of defendant that if he refused to leave the white car, he would be ejected therefrom. No physical injury whatever was done to the plaintiff.

The question here presented is whether or not a railroad company may lawfully require that its white and colored passengers shall ride in separate coaches, or whether a member of either race shall have the right to demand that he shall be allowed to ride in the same coach with the other race, irrespective of the accommodations tendered him in a separate coach.

19 This case has been tried without regard to the Kentucky Statute requiring separate coaches for the two different races.

The defendant seeks to justify, not under a statute of Kentucky, but under its right to regulate by reasonable rules the transportation of its passengers. It claims that it had a rule by which the two races should be required to ride in separate cars, and that under this rule, it required the plaintiff to ride in a car set apart for members of his race, which the defendant asserts was in all respects as good as that assigned to white passengers.

In instructing the jury the Court told them that if the defendant had a rule by which the two races were required to ride in separate

cars, and that this rule was a reasonable rule, and that the accommodations in the car assigned to the plaintiff were as comfortable, convenient and safe as those of the coach for white passengers, the plaintiff could not recover, but that the jury should find for the plaintiff, unless the jury believed that the defendant did have such a rule, and that said rule was reasonable, and that the car assigned to colored passengers was as comfortable, convenient and safe as that assigned to white passengers.

Under these instructions the jury found a verdict for the defendant.

The question as to the right of common carriers to separate the two races is not a new one. As early as 1849 the Supreme
20 Court of Massachusetts decided that it was lawful for a school committee to require that the children of the two races should attend separate schools. The case of Roberts vs. The City of Boston, in which this question arose is interesting and instructive. In that case the plaintiff, a colored girl, was represented before the Supreme Court by Charles Sumner as her attorney, and Judge Shaw was the Chief Justice and delivered the opinion of the Court. Under the laws of Massachusetts no discrimination whatever could be made between the two races, but each had exactly equal right with the other to attend the Common schools.

The School Committee of Boston adopted this resolution—

Resolved, That in the opinion of this Board the continuance of separate schools for colored children, and the regular attendance of all such children upon the schools is not only legal and just, but is best adapted to promote the education of that class of our population.

The plaintiff was a colored child, five years of age, and being refused admission to one of the white schools, which was much nearer to her place of residence than the colored school, she brought an action to recover damages for such refusal. In delivering the opinion of the Court Chief Justice Shaw held that the rule adopted by the committee was not unreasonable, denying the plaintiff any relief, and said—

21 "The Committee apparently upon great deliberation, have come to the conclusion that the good of both classes of schools will be best promoted by maintaining separate primary schools for colored and for white children, and we can perceive no grounds to doubt that this is the honest result of their experience and judgment.

It is urged that this maintenance of separate schools tends to deepen and perpetuate the odious distinction of caste founded in a deep rooted prejudice in public opinion.

This prejudice, if it exists, is not created by law, and probably cannot be changed by law. Whether this distinction and prejudice existing in the opinion and feelings of the community would not be as effectually fostered by compelling colored and white children to associate together in the same schools, may well be doubted; at all events, it is a fair and proper question for the Committee to consider and decide upon, having in view the best interests of both classes of children placed under their superintendence, and we cannot say that their decision upon it is not founded on just grounds of reason and

experience, and in the results of a discriminating and honest judgment."

In the case of Day vs. Owen decided by the Supreme Court of Michigan, the plaintiff applied for a cabin passage on the Steamer "Arrow," tendering pay for the same, but although there was room for the plaintiff, his tender was refused and cabin passage was denied him. The defendant pleaded that the plaintiff was a colored
22 man, and that by the custom of navigation, and the usage prevailing among steamboats employed in carrying passengers on Detroit River and Lake Erie, colored persons were not allowed the privileges of cabin passengers, and that by regulation established — course of business of said boat colored persons were not received as cabin passengers. The Court held this regulation to be valid, saying that the plaintiff had the right to be carried upon the boat, but that the defendant might regulate the manner in which he was carried by reasonable rules and regulations; and the regulation in question was adjudged a sufficient defence against plaintiff's claim.

In the case of Murphy vs. Western & A. R. R. &c., in the United States Circuit Court for the Eastern District of Tennessee, Judge Key, in his charge to the jury said—

"Again I believe that where the races are numerous a railroad may set apart certain cars to be occupied by white people, and certain other cars to be occupied by colored people, so as to avoid complaint and friction; but if the railroads charge the same fare to each race it must furnish substantially like and equal accommodations."

In the case of Houck vs. The Southern Pacific Railway Company, in the United States Circuit Court for the Western District of Texas, Judge Boarman, passing upon a motion for a new trial, in speaking of the charge to the jury, said—that the jury had been
23 charged that a railway company might, under a proper showing of facts, be justified in setting apart one or more coaches for the use exclusively of white people, and other coaches for the use exclusively of colored people, but that when the management undertook to carry out such a rule, it was charged with the duty of furnishing the colored passenger who paid first class fare, as safe and substantially as inviting a car as that furnished to white passengers.

In the case of Hall vs. De Cuir, decided in 1877 by the Supreme Court of the United States, a question much the same as that made in this case was decided. This case was carried to the Supreme Court upon a writ of error from the Supreme Court of Louisiana. It appears that under the Constitution of Louisiana it was provided that all persons "shall enjoy equal rights and privileges upon any conveyance of a public character." By an Act of the Legislature of that State, approved February 23rd, 1869 an attempt was made to enforce this provision. The Act provided, in substance, that common carriers should have the right to refuse to admit or carry persons in certain cases such as, the refusal to pay fare, or where the passenger was guilty of misconduct, and generally for those things which a common carrier without any special enactment would be authorized to refuse to carry a passenger. The Act further provided that the

rules and regulations of common carriers should make no
24 discrimination on account of race or color.

The plaintiff, a person of color, took passage upon a boat "The Governor Allen", from New Orleans to Hermitage, a landing place within Louisiana, and being refused accommodations on account of her color in the cabin specially set apart for white persons, she brought an action to recover damages. The defendant, Benson, claimed that the Act of the Legislature was inoperative as to him because it was an attempt to regulate commerce among the states. The District Court held the defence not valid and a judgment for One Thousand Dollars being given against the defendant, he appealed to the Supreme Court of the State where the ruling of the District Court was sustained.

Upon the appeal to the Supreme Court of the United States, Chief Justice Waite in delivering the opinion of that Court reversing the judgment of the Supreme Court of Louisiana said:

"This power of regulation may be exercised without legislation as well as with it. By refraining from action congress, in effect, adopts as its own regulations those which the Common law, or the Civil law, where that prevails, has provided for the government of such business, and those which the States in the regulation of their domestic concerns have established affecting commerce, but not regulating it, within the meaning of the Constitution. * * * Congressional inaction left Benson at liberty to adopt such reasonable rules and regulations for the disposition of passengers upon his boat
25 while persuing her voyage within Louisiana, or without, as seemed to him most for the interest of all concerned * * * we think this statute to the extent that it requires those engaged in the transportation of passengers among the States to carry colored passengers in Louisiana in the same cabin with whites, is unconstitutional and void. If the public good requires such legislation it must come from Congress, and not from the States.

In a concurring opinion delivered by Justice Clifford, among other things, he said—

"Sufficient appears to show that the plaintiff was a person of color and that the defendant was the master and owner of the steamer, which is a packet vessel duly enrolled and licensed for the coasting trade, and that the vessel was engaged in carrying passengers and cargo between the port of New Orleans in the State of Louisiana, and the port of Vicksburg, in the State of Mississippi; that the steamer has two cabins for the accom-odation of passengers conveniently arranged one above the other; that the upper is assigned to white persons, and that the lower is assigned to persons of color, both being constructed with state rooms, cabin, and a hall used as a dining room where meals are furnished; that the plaintiff, being at the time, in New Orleans and desiring to visit her plantation in another parish of the same State, went on board the steamer to secure her passage to the proper landing place near her plantation; that the clerk of the steamer to whom she applied for a passage
26 in the upper cabin, having previously informed her agent that he could not give her passage in that cabin, refused her

request, telling her at the same time, that he would give her a passage in the lower cabin; that the plaintiff declined to accept a berth in the lower cabin, and that she passed the night during which she remained on board, sitting in a chair, in what is known as the recess back of the upper cabin."

After further discussion of the questions involved in that case, the learned Justice says—

"Governed by the laws of Congress, it is clear that a steamer carrying passengers may have separate cabins and dining saloons for white persons and persons of color, for the plain reason that the laws of Congress contain nothing to prohibit such an arrangement."

And citing with approval the case of Day vs. Owen, above referred to, the Court says, in substance, that common carriers may make rules and regulations of the kind referred to, but that such rules must be reasonable, and of a permanent nature, and not made for a particular occasion or emergency.

It seems to me, that the plaintiff misconceives his case. He claims that being and "interstate passenger," the railroad company could not as to him make the regulation in question, and that in attempting to do so, it was violating the laws of the United States. If the decisions of the Supreme Court and other decisions referred to, are to be relied upon, this view is incorrect. In the case of Hall vs. De Cuir, the Supreme Court unmistakably declares that a
27 common carrier may make this regulation, if it desires to do so, and that until Congress shall legislate differently, the regulation is valid.

Upon the questions of fact involved in this case, I think no just cause of complaint exists as to the instructions to the jury. Recognizing the right of the defendant to make the rule in question, the Court told the jury that they must find for the plaintiff, unless they believed that such rule had been made and that it was reasonable, and that the coach in which plaintiff was required to ride, was as convenient, comfortable and safe as the one from which he was expelled. The verdict of the jury finding for the defendant, must be taken to mean that such a rule had been adopted; that it was reasonable, and that defendant did furnish plaintiff a seat in a coach as convenient, as comfortable and as safe as that assigned to white passengers. Under these circumstances, I can see no ground upon which a new trial can be granted.

Wherefore, Plaintiff's motion for a new trial is overruled, to which ruling of the Court the plaintiff excepts, and prays an appeal to the Court of Appeals of Kentucky, which is granted.

And afterwards at a Term of Court held for said Circuit on the 15th day of October, 1906, the following order was entered herein, to-wit:

Stipulation Filed and Noted.

The plaintiff files a stipulation of parties that he shall have sixty days from September 19, 1906, within which to tender his bill of exceptions herein, which is noted.

28 *Bill of Exceptions Made Part of Record.*

The plaintiff now tenders his bill of exceptions herein, and moves that they be signed and made part of the record herein; which bill of exceptions is now examined, approved, and signed, and made part of the record of this action, without being spread on the Order Book.

The stipulation filed and noted herein on the 15th day of October, 1906, is in words and figures as follows, to-wit:

Stipulation.

It is hereby agreed that the plaintiff, J. Alexander Chiles, shall have sixty days from September 19, 1906, within which to tender his bill of exceptions herein.

ALLEN & DUNCAN,
C. J. BRONSTON,
B. E. SMITH,
By J. A. CHILES,
Att'ys for Plaintiff.
JNO. T. SHELBY,
Att'y for Defendant.

The Bill of Exceptions filed and noted herein on the 15th day of October, 1906, is in words and figures as follows, to-wit:

29 *Bill of Exceptions.*

Be it remembered, That upon the trial of this action, upon the 22nd day of May, 1906, a jury was empaneled and sworn, and Miss Mary A. Chiles, the Official Stenographer of this Court, was ordered by the Court to take down the transcript and report of the evidence of the proceedings herein.

The case having been stated to the jury by Col. John R. Allen, for the plaintiff, and Mr. John T. Shelby, for the Defendant, the plaintiff then introduced in his behalf the following witness: himself, J. Alexander Chiles.

Transcript of Evidence Made Part of Record.

The said witness testified, as shown by the Official Stenographer's report, the transcript of evidence, which has been filed in the Clerk's office, of this Court, which is referred to and made a part hereof, as fully as if copied herein. The plaintiff then announced his case closed.

Defendant thereupon moved the Court to peremptorily instruct the jury to find in its favor; which motion was overruled by the Court to which the Defendant excepted at the time.

Thereupon the Defendant introduced the following witnesses: R. J. Brown and W. Ridgway, each of whom testified as shown by

the said Official Stenographer's report and transcript of the evidence, which is referred to and made a part hereof, as if copied herein.

The foregoing was all the evidence offered by either party,
30 or heard upon the trial of the action. Said Official Stenographer, Mary A. Chiles, took down the report, and made the following transcript of the testimony of all of said witnesses, and of the testimony of all of said witnesses, and also the objections made, and exceptions reserved by the Plaintiff and defendant, respectively in respect to the admission, and exceptions to the evidence and rulings of the Court thereon, which objections and exceptions were made at the time of said rulings, and each and all are fully contained and set forth in said official transcript, which is hereby made a part of this Bill of Exceptions, in all respects as if fully copied herein.

Instructions Offered by Plaintiff.

Thereupon, at the close of all the evidence aforesaid, the Plaintiff offered the following written instructions, numbered from one to four inclusive, and moved the Court to give the same to the jury. Said instructions are as follows, to-wit:

"1. It being admitted by the pleadings that the plaintiff did purchase a first class ticket from Washington in the District of Columbia to Lexington in the State of Kentucky, the Court instructs the jury that at the time he was removed from the coach he was riding in from Washington to Ashland to the colored coach at Ashland he was an inter-state passenger, and the Court further instructs the jury that the defendant had no right to compel the
plaintiff to remove from the one coach into the other and
31 if the jury believe from the evidence that the defendant's employees, agents, or servants by the use of force or by threats or menace or force or by duress compelled the plaintiff to move at Ashland, Ky., from the car in which he had ridden from Washington into the coach set apart exclusively for colored passengers, they should find for the plaintiff such damages as he may have sustained by reason thereof.

"2. In estimating the damages the jury may take into consideration any humiliation or shame and any distress of mind occasioned by said removal.

"3. The jury are instructed to find for the plaintiff and to fix his damages in such sum as will compensate him for any distress of mind or any shame or humiliation caused by reason of the removal of plaintiff from one of said cars to the other.

"4. The Court instructs the jury that the Defendant had no right to eject the plaintiff under any rule or regulation requiring white and colored passengers to ride in separate coaches unless at the time the plaintiff purchased his ticket notice was given to plaintiff of the existence of such rule or regulation."

The defendant offered the following instructions, A to C, three inclusive, and moved the Court to give the same to the jury, as follows:

32 *Instructions Offered by Defendant.*

"A. If the jury believe from the evidence that the plaintiff at Ashland got into a coach which was set apart for the exclusive use of white passengers, and was requested by the conductor of the train to leave said coach and go into the compartment set apart for colored passengers, and they further believe from the evidence that said compartment was substantially as comfortable in its appointments as the coach from which he was requested to go, then the law is for the defendant and the jury should so find.

"B. The jury are instructed that the defendant had the right to separate its white and colored passengers, whether state or interstate, and unless they believe from the evidence that the compartment into which plaintiff was compelled to go was not substantially equal in its accom-odations, quality, convenience and comfort to the car which he was required to leave, they should find for defendant.

"C. Unless the jury believe from the evidence that defendant refused to carry plaintiff in a first class coach from Ashland to Lexington they should find for defendant."

Instructions Offered by Plaintiff and Defendant Refused.

Each and all of the instructions, one to four inclusive, offered by the plaintiff, were refused by the Court, to which ruling of
33 the Court, the plaintiff at the time excepted. Each and all of the above instructions, A to C inclusive, being three, offered by the defendant, were refused by the Court, to which ruling of the Court, the defendant at the time excepted.

The Court then, of its own motion, over the objection of the plaintiff and defendant, gave to the jury the following instructions, numbered consecutively from one to three.

Instructions Given by Court.

"1. Unless the jury believe from the evidence that the defendant, The Chesapeake and Ohio Railway Company, when, through its agents it ejected the plaintiff, J. Alexander Chiles, from one of its coaches and required him to go into another of its coaches, had a rule or regulation and that said rule was reasonable by which colored persons were required to ride in a coach different from the coach ridden in by white persons, and further, that the coach to which said Chiles was required to go was a coach substantially equal to that which he had been required to leave in convenience, comfort, and safety, the jury should find for the plaintiff.

"2. If the jury believe from the evidence, that the defendant, had a rule or regulation by which colored passengers upon its trains should ride in separate coaches from the coaches in which
34 white passengers rode, and that said rule or regulation was a reasonable rule or regulation, and if the jury further be-

lieve from the evidence then when defendant —— —— ejected plaintiff from the coach in which he was sitting and required him to go into another coach, it did so under such rule or regulation; and if they further believe from the evidence, that the coach in which the plaintiff was required to ride was substantially equal in convenience, comfort and safety to that which he had been required to leave, and that it was a coach set apart for the use of colored passengers, the jury should find for the defendant.

"3. If the jury find for the plaintiff, they should find for him in such sum in damages, not exceeding Ten Thousand Dollars, as will fairly compensate the plaintiff for any injury done him by being ejected from one of defendant's coaches, and being required to ride in another coach, and in estimating the damage done to plaintiff, if any, the jury may consider any mortification, or humiliation of the plaintiff, if any, resulting from being so ejected from one coach, and required to ride in another coach".

Objections to Instructions and Same Overruled.

The plaintiff at the time objected to the giving of each of the aforesaid instructions given by the Court, but the Court over-ruled said objections, and gave said instructions and each of them
35 to the jury over the objection of the plaintiff, to which ruling of the Court, as to each of said instructions, the plaintiff at the time excepted, and same was noted of record. No other instructions than those above mentioned were offered by the plaintiff or defendant, or given or refused by the Court. And these were all the instructions of any kind given at this trial.

After argument by counsel, the jury retired, and returned into Court the following verdict:

Verdict.

"We the jury find for the defendant."
(Signed)

B. C. PREWITT.
GEO. LAND.
T. W. BERKLEY.
J. M. HEDGES.
L. J. FALLON.
W. P. HUGHES.
H. M. SKILLMAN.
R. H. WILSON.
GARRETT WATTS.

After the rendition of said verdict, the plaintiff, on May 23rd, within three days, moved the Court for a new trial, and filed written grounds in support of said motion, and moved the Court to set aside the verdict and judgment. Said motion and grounds for a
36 new trial are copied herein, and made a part hereof, and are as follows, to-wit:

Motion and Grounds for New Trial.

(See Page 10 of This Record for Motion and Grounds for New Trial.)

Afterwards, on July 26th, 1906, the Court overruled said motion for a new trial, to which ruling of the Court the plaintiff at the time excepted, and prayed an appeal to the Court of Appeals, which was granted; and afterwards, to-wit: on the 14th day of October, 1906, being within sixty days from September, 19, 1906, as per agreement of parties filed in this case, the plaintiff adduced this, his Bill of Exceptions, to the Honorable Watts Parker, Judge of the Fayette Circuit Court, Kentucky, who now certifies that the said official transcript and evidence is true, accurate and correct, and a complete copy and transcript of all the evidence adduced on the trial as herein stated, and makes said transcript a part of this Bill of Exceptions, as if fully copied herein, and now certifies this Bill of Exceptions to be true, accurate and complete, and the same is now ordered to be filed, and made a part of the record of this action.

Witness, The hand of Watts Parker, Judge of Fayette Circuit Court, this 14 day of October, 1906, at Lexington, Fayette County, Kentucky.

WATTS PARKER.

Bill of Exceptions signed by Judge.

37 STATE OF KENTUCKY,
Fayette Circuit Court, sct:

I, James C. Rogers, Clerk of the Fayette Circuit Court, in and for the County and State aforesaid, do hereby certify that the foregoing Twenty-Six (26) pages is a true, complete and correct copy of the Record in a certain case in said Court wherein J. Alexander Chiles is plaintiff and Chesapeake & Ohio Railway Company is defendant, with the exception of the Official Stenographic Reporter's Transcript of Evidence which is to be used in the original in Court of Appeals, as the same remains of record in my office.

In witness whereof I have hereunto signed my name as Clerk aforesaid this 12th day of November, 1906.

Attest:

JAMES C. ROGERS, *C. F. C. C.*,
By J. H. CARTER, JR., *D. C.*

38 And with said transcript there was filed a transcript of the testimony, and which is in words and figures as follows:

39 Fayette Circuit Court.

Stenographer's Transcript.

J. ALEXANDER CHILES, Plaintiff,
vs.
CHESAPEAKE AND OHIO RAILWAY Co., Defendant.

LEXINGTON, KY., *May 22nd*, 1906.

This cause coming on this day for trial, the jury being duly empanelled and sworn, the plaintiff, having been duly sworn, testified on behalf of himself as follows:

Q. 1. You are the plaintiff in this case?
A. Yes sir.
Q. 2. What is your age, Mr. Chiles?
A. Going on forty six; in my forty seventh year.
Q. 3. What is your profession and business?
A. Practising lawyer and real estate agent.
Q. 4. Graduate at any law school?
A. Yes, sir, I graduated from the University of Michigan; been practising in Lexington since November 20th, 1890, about sixteen or more years.
Q. 5. In the spring of 1904 did you go east from Lexington?
A. Yes sir.
Q. 6. For what purpose?
A. In April I went to New York to——

40 Defendant objects, which objection is sustained by the Court; to this ruling of the court the plaintiff excepts.

Q. 7. Do you recall when you started from Washington towards the city of Lexington?
A. Yes sir.
Q. 8. When was it?
A. I purchased my ticket on April 12th, about half past twelve o'clock to catch the 11 o'clock P. M. train.
Q. 9. Did you buy a Pullman ticket?
A. I applied; couldn't get any; they said they didn't have any. And then I bought a regular first class passenger ticket.
Q. 11. Do you recall what you paid for it?
A. Gave $15.00.
Q. 12. What time did you leave Washington?
A. The train was a little late; left at 11:30 P. M.
Q. 13. What kind of car did you board in Washington?
A. First class car.
Q. 14. Was there any interference with you in going through the state of Virginia?

Defendant objects, which objection is sustained by the Court; to this ruling of the Court the plaintiff excepts.

Q. 15. Well, you did travel in the car to Ashland; that first-class car.

A. Yes sir.

Q. 16. When you got to Ashland what took place?

A. Before getting there, they hollœered, "you will have
41 to change cars for Louisville, and points between Louisville and Lexington,"—and named the different points,—and then, in changing cars, I took my grip and baggage and I looked at the other passengers, and started to go in the car, and he said, "go in the front car—said, colored passengers in the front car; I told him I was an interstate passenger, making no further objections; he told me to go in the car and I went in.

Q. 17. What kind of baggage did you have with you?

A. Well, what was called a gentleman's dress-suit case, and travelling satchel.

Q. 18. Have those in your hands?

A. Yes, sir, and an umbrella.

Q. 19. Where did you go? And what took place first?

A. I went in the first class car, and after sitting there I arranged my things in the car, and while sitting there the gentleman came up and said, "you will have to go in the front car"—that was the conductor that approached me, there.

Q. 20. Go on.

A. I told him I didn't think so; I said I am an interstate passenger; I don't think the law applies to me. He said, "well you will have to go in there;" and I said, "no, sir, I am an interstate passenger; I don't think that law applies to me; I bought a first-class ticket and don't think that law applies to me." He said, "You won't go?" and I said, "No." I want my rights," and then he went out and come back with a short set gentleman; there were
42 several white people in the car. I sat there with my paper on the left window this way.

Q. 21. You say you were reading?

A. Yes, sir, reading the papers, and this same gentleman and conductor came and said, 'you will have to go out of this car", and I said, "pardon me, I told you before, I am an interstate passenger, and offered my ticket and he took it and read it and gave it to the other gentleman and said,—no, he didn't get the ticket clear in his hands—and the gentleman with him said, "you will have to go in the other car"; I said, "I am an interstate passenger; I am a lawyer and I know my right;" I said, "the law does not apply to me—does not apply to an interstate passenger." And by that time he beckoned to the policeman——

Q. 22. Where was the policeman?

A. I don't know—in the rear, and he came up—there were four or five white men coming in from the street, and I think the brakeman with him, and they stood in the gangway there, and I was sitting there about five feet—those two gentlemen at my rear—and this policeman came up and said "young man, you will have to move in the front car, and I said, "Why," and he said, "you will have to go in where the colored passengers go;" I said, I am an in-

terstate passenger." He said I will have to obey my orders." I said, "I will not voluntarily move out of my seat; I am a lawyer." And he said, "Come on," touching me this way, and took my baggage and said, "follow me;" and I said "All right sir, you put me
43 under arrest, I will go," and I walked on out. There is first a department of the smoker for the white people, and here is a partition, about two seats for the colored people, and here is a car where they put me, and here is a baggage car there.

Q. 23. Passing through the white smoking department and colored department, were there people smoking?

A. Yes sir, in the white department, but nobody smoking in the colored department.

Q. 23. In going into this other compartment of that car, how did they compare in size to the car you were compelled to leave?

A. Very much smaller, and the accommodations were different. Didn't have any toilet in there for a person to wash his hands and face, or towel to wipe his hands on and wash his face. They had, as near as I can remember, one toilet department there; the car was much smaller, next to what they call the baggage car where the smoke comes right on top of it, and every time the door slammed the smoke would come in the compartment where I sat. The seats, I don't remember, were like the car I came out of or not.

Q. 24. Do you smoke yourself?

A. No sir.

Q. 25. Have you ever smoked?

A. No sir.

Q. 26. You say any person passing backwards and forwards, the smoke would come in from the other department into your department?

A. Yes, sir, and besides that—

44 COUNSEL FOR DEFENDANT: I do not understand whether it was tobacco smoke or engine smoke.

A. Both; next to the baggage car, and as near as I can remember the car in which I rode—part is the baggage car and the other part is where I rode, but in this instance, I think the baggage car was separate from where I rode in.

DEFENDANT'S COUNSEL: The question I understood, was whether the smoke was from the engine or from the room.

A. The smoke came from both—from the engine and from where the gentlemen were smoking, from the department; I had to pass through that to get to my department, a small door between us.

Q. 27. How long did you ride in that car, Mr. Chiles?

A. I think about 1:30 in the day when we arrived in Ashland, and got in here about 5:30, or 5:25; I think the car was a little late in getting in.

Q. 28. Do you know where the conductor got this policeman from?

A. No sir; seemed like the policeman was right there; all he had to do was to beckon.

Q. 29. Did he have on any clothes or badge indicating his position?

A. Yes, sir, he had on his police uniform; the gentleman told me he had an officer and he had to do what the railroad required him to do.

Q. 30. What was your manner?

A. I tried to be pleasant as I am now.

Q. 31. You heard Mr. Shelby's statement, that your com-
45 plaint was that you were put from the white car, that you were not allowed to ride in the car with white people, was that your complaint?

Defendant objects, which objection is sustained by the court; to this ruling of the court the plaintiff excepts,

Q. 32. Did you have any objection to riding in the colored car?

Defendant objects, which objection is sustained by the Court; to this ruling of the court the plaintiff excepts.

Q. 33. Did you, in your conversation with this conductor, or with this officer, did you say at any time that you were entitled to ride in the white car?

Defendant objects.

Q. 34. What was your statement?

Defendant objects.

The COURT: You have a right to get from him the whole conversation.

Q. 35. What was it you said to the officer and conductor when he asked you to move?

A. I told him I was an interstate passenger and entitled to first class accommodations, and that the separate coach law did not apply to me, an interstate passenger.

Q. 36. What did your ticket call for?

Defendant objects, which objection is sustained by the court; to this ruling of the court the plaintiff excepts.

46 Cross-examination:

Q. 1. Mr. Chiles, how far was the train which you got into at Ashland to come from Ashland to Lexington, from the train which you had been travelling from Washington—how far did you have to walk?

A. As near as I can remember, we got off at the same depot.

Q. 2. How far did you walk?

A. Just got out at the depot and just waited until the car backed down there.

Q. 3. When you went to the train to get on, you went to what is known as the "Ladies' Coach," did you not?

A. I don't know whether it was the Ladies' Coach or not; I just went where I saw the passengers go.

Q. 4. You have travelled a good deal?

A. Yes sir.

Q. 5. You know what sort of carriage they call the Ladies' Coach?

A. Yes, sir.

Q. 6. Now, don't you know what is called the Ladies' Coach?

A. What I know by the Ladies' Coach was simply where the Ladies go, but this coach was where the general passengers went right in.

Q. 7. What do you understand by the Ladies' Coach?

A. I understand by the Ladies' Coach, a special car for the ladies.

Q. 8. I am not talking about a special car, I am talking
47 about—there is a coach known as the Ladies' Coach, that is the second passenger coach generally in the train, in which white men and white women ride—that is the coach you went to isn't it?

A. I just went where I saw the passengers go; I just followed the other passengers.

Q. 9. Did you see any other colored man go in that car?

A. No sir, I didn't see any colored people get on.

Q. 10. Was it only white men and white women?

A. Yes sir.

Q. 11. When you went in that car you had some sort of talk with the brakeman on that platform?

A. When I started to go in he called and said, "you get in the front car, sir:" I said, "Why?" He said, "You go where the colored passengers are." And I said, "I am an interstate passenger," and I went on.

Q. 12. This brakeman was assisting the people on the train was he not?

A. Yes, sir. Standing there on the platform, as they generally do.

Q. 13. As the train was getting ready to move?

A. Yes sir.

Q. 14. The car you went in was that the next to the last car, and the Louisville sleeper still in the rear of that?

A. I don't remember whether there was any sleeper attached or not to it.

Q. 15. There was a car in front of that?

A. Yes sir.

48 Q. 16. And then, still further in front, there was a baggage car?

A. I cannot say distinctly whether that baggage car was connected with this car where I was or not.

Q. 17. Didn't you say just now, it was, in your judgment?

A. No, sir. I said, I did not think it was.

Q. 18. Take this diagram, and let that represent the car into which you were moved by the police officer; I understood you to say to Col. Allen, that you went through the first compartment where there were some white men, and then through a similar one where there was nobody?

A. Yes sir.

Q. 19. And then you went on into this compartment there where the colored passengers were put?

A. Yes sir.

Q. 20. That was the forward end of that car, wasn't it?
A. Yes sir.
Q. 21. The end towards Lexington?
A. Yes sir.
Q. 22. Now, just in front of that wasn't there a baggage car, in front of that—a separate car?
A. Well, that is what I can't say distinctly, sir, because as I told you, I was displeased at the conduct—the way the gentlemen had treated me, and I just sat down there, and after explaining it to this gentleman and telling him I was an interstate passenger, they had no right—that is what I was thinking about.
Q. 23. I don't care what you were thinking about, I just asked you the question?
49 A. I say I don't know.
Q. 24. You did go through the compartment in the rear of this car?
A. Yes sir.
Q. 25. And then through a similar compartment which was used as a colored smoker?
A. Yes sir.
Q. 26. And then through the forward end of that car?
A. Yes sir.
Q. 27. Don't you know there was no baggage car through that forward end, if you went through the whole of the car?
A. I don't recall whether I went through the whole of the car, or not, because sometimes the compartments are connected.
Q. 28. But when they are connected, the colored car and baggage car are all in the same car, there are two compartments then, are there not?
A. I think that is it.
Q. 29. And you had already been in three?
A. Yes sir.
Q. 30. Then there was no baggage car connected with it?
A. I don't think the baggage car was connected with it.
Q. 31. Now, you went into the colored compartment where the colored passengers were carried?
A. Yes sir.
Q. 32. And took your seat there?
A. Yes sir.
Q. 33. Now, did you see, as you passed through the white
50 end of that car, there were some white men smoking in there?
A. Yes sir.
Q. 34. Do you remember that?
A. Yes, sir. I remember there were three or four gentlemen in there.
Q. 35. And they were smoking at the time?
A. One was smoking.
Q. 36. You noticed that particularly as you went through.
A. Yes sir.
Q. 37. Your excited state of mind did not prevent you from making a note of that fact, the fact that one man was smoking?

A. At least three in there.

Q. 38. Your mind was sufficiently clear to enable you to say that there were three men in there, and ascertaining the fact that one of those men were smoking?

A. As near as I can remember, as I went through there, I just glanced in and noticed there were three, not taking any particular attention, because the officer bade me follow him and I followed him where he told me to go.

Q. 39. As you went through this colored smoking compartment, now was there anybody in there smoking?

A. No sir.

Q. 40. Did you see anybody in there smoking at all?

A. No sir. Only two colored people at all on the car where I was put.

Q. 41. You did not see anybody using that colored smoking compartment on the way down to Lexington?

A. No sir.

51 Q. 42. Now, if you were riding in the front end of the car, coming towards Lexington, with the train coming in this direction, how much could the smoke that was in this white end of the car blow forward into the place where you were—blow through this smoking compartment to where you were?

A. At the time this door was fastened; I could look through this compartment when this door was open—this door would go back and stand there open, and you could look through and see in the other compartment.

Q. 43. I say, how much smoke came back there?

A. I don't know.

Q. 44. Well, did any of it?

A. Yes sir.

Q. 45. When your car was coming this way and you were in there, the smoker was in the rear of the car?

A. Yes sir.

Q. 46. You remember distinctly that you did get some of that smoke from the rear end of that car?

A. Yes sir; there were two colored men in the car with me.

Q. 47. They were not smoking?

A. No sir.

Q. 48. I understand in this colored end of the car where you were, there were only three colored men; that is, yourself and two other men?

A. All I saw.

Q. 48½. They were respectably behaved men?

A. Yes sir.

52 Q. 49. There was no dirt that they made, or no improper unbecoming conduct at all?

A. No sir.

Q. 50. You were annoyed by no profane language or boisterous behavior?

A. No, sir, no profanity.

Q. 51. In this compartment where you were, there was a toilet room?

A. Yes sir.
Q. 52. There was a washstand?
A. Well, I cannot say as to the washstand.
Q. 53. Well, what was it?
A. There was a place to get drinking water.
Q. 54. Wasn't there a wash bowl in there?
A. I don't remember the wash bowl.
Q. 55. You did not have an occasion to use it?
A. I wanted to use it because I kept myself soiled until I reached here.
Q. 56. If you wanted to use it, why are you not able to say as to whether there was a wash bowl?
A. I didn't see any.
Q. 57. Did you look for any?
A. I looked for one, as near as I can remember, I didn't see any.
Q. 58. As near as you can remember.
A. Yes sir.
Q. 59. Did you see one in that first coach you were required to move out of?
A. No sir, that was in the department, part of it, as I passed—that was in here.
Q. 60. Did you see it?
53 A. Yes sir.
Q. 61. In the other coach as you passed by?
A. Yes sir.
Q. 62. Now, when this police officer had you under arrest—I believe that is the phrase you used—what sort of arrest did he have you under?
A. As I told the gentleman in the beginning, I was a lawyer and I was acquainted with my rights in Kentucky, and that I would not voluntarily move out of my seat. I told the conductor that and told also the policeman when he came there; he told me you will have to move your seat into the other car and I told him I was an interstate passenger.
Q. 63. I did not ask you for the conversation—I asked you what sort of arrest?
A. O just put his hand on me, and touched me here, and said you come on and follow me.
Q. 64. He didn't hold you?
A. No sir, just put his hand on me.
Q. 65. Where was it he touched you?
A. Here.
Q. 66. Just touched you on the arm?
A. Yes, sir, after I told him I would not go voluntarily, he touched me and said "you follow me."
Q. 67. I understood you to say he did not hold your arm?
A. No sir.
Q. 68. Did he use any rough language to you?
A. No sir.
Q. 69. And there was no violence in his conduct?

A. Violence?—No sir, only the officer insisted on taking
54 me out.

Q. 70. And he simply touched you—I believe you illustrated it with your open hand—by putting the end of his fingers on your sleeve and said, "come, on, you follow me."

A. I don't know about his open hand, but he told me to follow him.

Q. 71. That is what you mean by "arrest?"

A. Yes sir, he told me — had to obey the orders of the road, didn't make any difference whether I was an interstate passenger or not.

Q. 72. He didn't take you before any officer? Did he?

A. No sir.

Q. 73. You did not understand that he was doing what is ordinarily understood by arresting a law breaker?

A. Yes; it is not any arrest of a law breaker to catch him by an officer and take him by force.

Q. 74. Did you understand that he was taking you into custody?

A. Yes sir.

Q. 75. Didn't you understand that his duty in making an arrest is to take you before a magistrate?

A. Yes sir, usually the case.

Q. 76. Does not the law require that when an officer arrests a person he is to be taken before a magistrate.

A. Yes sir, that is what the law requires.

Q. 77. Do you consider you were arrested in that sense of the word?

A. No sir.

55 Q. 78. The conductor used no force of any kind towards you?

A. No sir, only the force of the language he used.

Q. 79. Now, as I understood you to say, the only difference between the car that you were taken into and the car from which you came was that there was but one toilet room in that car, and that you saw no toilet there, is that a fact?

A. I couldn't see any towel, didn't see any washstand; the only place I recall was the place where you get water, because I went there to get water.

Q. 80. There was a toilet room in the car?

A. Yes sir.

Q. 81. You didn't notice any difference in the seats, did you?

A. No sir.

Q. 82. You didn't notice any difference in the finishing of the car?

A. No sir. I didn't pay any attention to that.

Q. 83. Don't you remember that that car was lighted by electricity?

A. No sir.

Q. 84. You don't remember that?

A. No sir.

Q. 85. Don't you remember as you passed through the tunnel the electric light was lighted?

A. I don't recall whether the car was lighted at all, because it was in the day time. I don't remember whether they were
56 turned on or not.

Here, plaintiff announced his case as closed, whereupon the defendant offered the diagram used in the examination as part of plaintiff's testimony, and moves the Court to instruct the jury to find for the defendant. Said motion was overruled by the court, to which ruling of the court the defendant excepts, and introduces on behalf of itself, the following witnesses.

57 *Copy of Diagram.*

Front.

Colored.	Colored Smoker.	White Smoker.

58 W. RIDGEWAY, who, having been first duly sworn, testified on behalf of the defendant, as follows:

Q. 1. You are a Conductor on the Chesapeake and Ohio Railway?

A. Yes sir.

Q. 2. How long have you been one?

A. Since 1890, sixteen years, sir.

Q. 3. Were you the conductor who had charge of the train known as No. 23, which runs from Ashland to Lexington, in April, 1904? At the time that this occurrence took place which we are investigating?

A. Yes sir. .

Q. 4. I will get you to state to the jury exactly what took place with reference to the plaintiff on that occasion.

A. I was getting my orders preparatory to leaving Ashland before the train started from there and my brakeman called my attention to the fact that a colored man had gone into the white coach. I says, "why didn't you direct him to the other coach", and he told me——

Plaintiff objects, which objection is sustained by the court.

Q. 5. Well, what did you do then?

A. I went in and requested the gentleman to go in the compartment set aside for his race by the statutes of Kentucky, and he refused to do it—requested that I force him out of the car—and then I went to the Superintendent's office to ask for advice; he, in turn, went to a lawyer's office, Mr. Wallace's office, and came
59 back and instructed me to have the gentleman go in the compartment set aside for the colored race; I then went in the

coach and again requested him to go, and he refused, and I said I would have to have an officer; I called an officer and asked him to escort the gentleman to the apartment, and he reached the grip and when he got up said, that is all he wanted before he went over.

Q. 6. Have you given me the whole conversation that took place between you and Mr. Chiles?

A. Well, he said he was a lawyer, in the conversation, and that he knew the law. I told him I couldn't help that, that the statutes was laid down, and the regulations were such that I, as a conductor was subject to a fine, and just in an ordinary conversation he said he was a lawyer, and knew the law and I said, I can't help it, as I had nothing to do with that; that it was the rules and regulations of the road, as well as the laws of Kentucky compelled me to have him ride in the apartment set aside for colored people.

Q. 7. Did he say anything about being an interstate commerce passenger?

A. Yes sir.

Q. 8. When you called the officer what did the officer do?

A. Walked up and caught hold of the suit cases belonging to the gentleman, and he said "that is all I wanted", and walked right ahead of him.

60 Q. 9. Well, did the officer say anything to him?

A. I think he said, "you will have to go in the other car." That was about all; I cannot say word for word what he said; there was nothing else.

Q. 10. Did the officer touch him?

A. No sir.

Q. 11. Are you positive about that?

A. Yes sir. He had a suit case in each hand.

Q. 12. The officer did?

A. The officer did and Mr. Chiles picked up his over coat slinging it on his arm and followed him.

Q. 13. Did you touch the plaintiff at all, yourself?

A. No sir.

Q. 14. Did you use any rough or violent language towards him?

A. No sir.

Q. 15. Did the officer use any rough or violent language to him?

A. No sir, he didn't say any more than what I have repeated.

Q. 16. Did you go into the forward car with Mr. Chiles?

A. I don't remember whether I did or not; I don't think I did.

Q. 17. How many cars were in that train beside the engine? Just name them in the order in which they came.

A. There was a combined express, baggage and mail and then there were two coaches, and then the sleeper, four coaches in all.

61 Q. 18. Which one of those cars was it that Mr. Chiles first went into, and from which he was required to go?

A. The car that he went into that he was required to leave?

Q. 19. Yes.

A. It is the car next to the sleeper; the third car from the front.

Q. 20. Was that the car set apart and reserved for the white people?

A. Yes, with a sign.

Q. 21. The signs were up in it?

A. Yes sir.

Q. 22. Were ladies and gentlemen both in the car?

A. Yes sir.

Q. 23. Now describe that car that was there in front; how many compartments were in it, and what did they consist of.

A. Three compartments; the rear compartment is used as a white compartment; the front compartment is used as a colored compartment and the middle—there are two partitions across the car—that is used for the colored smoking room.

Q. 24. When did that car come from Lexington?

Objection by plaintiff.

A. I run it up sir.

Q. 25. When did it come up?

A. The car left Louisville on train No. 24 April 12th on
62 which I was conductor and got to Ashland at 12.25 the next morning.

Q. 26. Did it remain there or go anywhere else until it came on
23 that afternoon?

A. It remained at Ashland; it was taken around the belt to the shops.

Q. 27. State whether or not that car was cleaned and aired at Ashland?

A. Always clean and air——

Plaintiff objects.

Q. 28. Was it on that occasion, between those two trips, cleaned and aired at Ashland?

Plaintiff objects, except as to what he knows.

A. I know the condition that it went in and the condition that I received it the next day at noon to bring it out.

Q. 29. Had it been cleaned?

A. It was clean when I received it, the same as any other car on the train except the sleeper, which gets there from New York.

Q. 30. I will get you to state to the jury whether that car differs in any respect as to its finishing—as to its seats—as to its accommodations—and if so, in what respect from the car out of which Mr. Chiles was required to go?

Plaintiff objects, which objection is sustained by the Court; to this ruling of the court the defendant excepts.

Q. 31. I will get you to describe now what sort of seats, the
63 sort of upholstering; the sort of glass there was in the windows, and the construction of that white car as to its top—the ornamentation and decoration; give as complete a description as you can.

A. The car from which Mr. Chiles left—the car is of course a

vestibuled coach, having a vestibule on the platform—the ordinary vestibule, and the upholstering is plush as is used in all coaches; the ordinary toilets, washstand, electric lights, the head line in the car properly colored and painted, frescoed, as ordinary coaches are, with the floor carpeted with rubber instead of using a carpet; now they use a rubber mat from one end to the other end of the car; coolers in both end-; I don't know of anything else.

Q. 32. Now, I will get you to explain what sort of car the forward car in which Mr. Chiles was taken.

A. The exactly same building—the exact same——

Plaintiff objects.

COURT: Just describe the car.

Q. 33. Just go along and describe the car, Mr. Ridgeway.

A. Well, it is a vestibuled car with plush seats. Same color, same kind of plush as was in the car I have before described. There is an addition to the car I have just described, two partitions, which is the only exception to the car I have described before, two uprights, shutting the car off, which does not interfere with the passengers in any way, shape or form, except divide the colored people from the smoking part.

Q. What was the interior wood work of the car?

64 A. Was the same—exactly the same; built on the same plan.

Q. 35. Did it have a toilet room?

A. Yes, washstand, towel, and electric lights.

Q. 36. Are you certain whether or not there was a washstand in that room?

A. Yes sir.

Q. 37. Was there a towel there?

A. There was.

Q.38. Do you know whether those electric lights were in there—whether in that car?

A. Yes, I know it, because I turned them on myself.

Q. 39. Were they used on that trip going down to Lexington?

A. Through every tunnel, yes sir.

Q. 40. What was the condition of that car as to cleanliness?

A. It was as clean as any other car in the train, any other coach; in fact, cleaner than the sleeper, because the sleeper had come through from a long trip.

Q. 41. I will get you to state to the jury whether this compartment car was one that was built on the same specifications as the other car in the rear of it?

Plaintiff objects.

COURT: I don't think it is material.

Q. 42. How was it made into a compartment car—was it originally built as a compartment car, or was this partition afterwards put in?

65 Plaintiff objects—which objection is overruled by the court; to this ruling of the court the plaintiff excepts.

A. The partitions were put in afterwards; the car was in service before; I run the car as a car without partitions; after the law had been passed there was one partition put in and I myself wrote a request for the second partition, to allow a smoking apartment for the colored people, and they put two partitions in instead of one; it originally was a coach and one partition was put in, and afterwards a second one was put in to allow a smoking car for the colored people.

Q. 43. I don't know whether I asked you whether there was a cooler?

A. There was and I drank out of it myself.

Q. 44. Was there any difference in that cooler from the cooler in the other coach?

A. No difference.

Q. 45. Was it decorated as æsthetically as the one in the white car?

A. Just the same, sir.

Q. 46. I will get you to state to the jury whether or not this car in which Mr. Chiles was required to go—the one used for colored people, was what is known amongst rail road men, as a "first class coach" or not?

Plaintiff objects, which objection is sustained by the court; to this ruling of the court the defendant excepts.

Plaintiff withdraws his objection.

A. Yes, sir, it is a first class coach.

66 Q. 47. I will get you to state to the jury whether or not you are required to separate the white and colored passengers on your train?

Plaintiff objects, which objection is overruled by the court; to this ruling of the court the plaintiff excepts.

A. The rules of the Company, or instructions was, when the law was passed, we were to separate the colored and white races.

Q. 48. You do that without reference as to whether they are interstate passengers or not.

A. Yes sir.

Cross-examination:

Q. 1. If I understand you, there were only two coaches in addition to the sleeper?

A. That is all, sir.

Q. 2. One had no compartment at all—it is just a coach about thirty five feet long, I presume?

A. Yes sir.

Q. 3. And that was the coach in which passengers, ladies and gentlemen went?

A. Yes sir.

Q. 4. Now, I want to ask you if there was a smoking compartment in that coach.

A. Yes sir.

Q. 5. That is, in that coach you had a smoking apartment for the convenience for gentlemen?

A. Yes sir.

Q. 6. In that was there any bowl and towel?

A. No sir.

67 Q. 7. Where was the bowl and towel in the coach that I am referring to.

A. At the end of the car where the toilet is.

Q. 8. Now, the smoking compartment was I presume, at the rear end of the car?

A. Couldn't state that.

Q. 9. They have them at the end of the car, don't they—I mean at the end from the engine, so the smoke, instead of being carried back you pay no attention to that?

A. No sir. Don't turn the car around.

Q. 10. Did you have any smoking compartment in the other coach?

A. Had a smoking compartment of the same seating capacity.

Q. 11. I am asking you if you had the same kind of smoking compartment.

A. It is not built the same, no sir.

Showing the witness a diagram—

Q. 12. Now, in the coach that was next to the sleeper there was no partition here in the middle?

A. No sir.

Q. 13. The smoking compartment was at the end—wasn't it boxed off there?

A. That is the way they are usually.

Q. 14. I am talking about that car there.

A. I don't know some coaches had the smoking department—I don't remember about that.

Q. 15. Don't you remember that that you described so minutely?

68 A. I didn't describe the smoking department where it went to.

Q. 16. Didn't you just say to the jury that there was.

A. I think there is a smoking room in there.

Q. 17. Didn't you say that the smoking room was at one end of the car and that the toilet and water was at the other end?

A. Yes sir.

Q. 18. Now, wasn't there also a toilet in connection with that smoking department?

A. No sir, it was in the car outside the smoker.

Q. 19. So, if the smoking department was in this corner, the toilet was in the other.

A. No sir, the toilet was right in behind there.

Q. 20. Now then, just in front of that car, up nearer the engine, there was another car about the same size?

A. Same size, yes sir.

Q. 21. Now when you went into this other car I will ask you if

one-half of it, about in proportion, wasn't set apart for white people?

A. Yes sir.

Q. 22. Now then, for the accommodation of your white passengers there you had an entire coach in which both ladies and gentlemen sat?

A. Yes sir.

Q. 23. You had towels for the other coach in which white men sat?

A. Yes sir.

Q. 24. You didn't allow ladies to go in there, did you?

69 A. Ladies? No sir.

Q. 25. Do you know why?

A. O, I allowed them if they wanted to; I just told them it was a smoking department.

Q. 26. Did the news boy, or butcher of the train keep his books in there? Books and stuff?

A. Kept his stuff in the head end of the car.

Q. —. Which part, the colored part?

A. Yes sir.

Q. 27. So, in this little part you have cut off here, the little half of the car—you take up part of it?

A. Not necessarily, no sir.

Q. 28. You did do it?

A. Yes sir.

Q. 29. In that car?

A. He can put it in either car.

Q. 30. Did he have it in this car?

A. Yes sir.

Q. 31. And he occupied, his boxes, and candies, about two seats.

A. He occupied two seats.

Q. 32. Do you remember whether there was a toilet in this colored compartment?

A. I do, sir.

Q. 33. Where was it—near where the butcher keeps his stuff?

A. The butcher keeps his stuff on this side of the car, next the smoking room, and the toilet is over there, the washstand outside, and a washstand inside.

Q. 34. Washstand inside of the toilet?

70 A. Yes sir.

Q. 36. And a washstand outside of it?

A. Yes sir.

Q. 37. Where is this washstand located on the outside of that toilet?

A. In the partition the toilet comes out to the aisle, and there is an opening in there and a washstand.

Q. 38. Now, isn't it a fact that the water-cooler is right at the corner of that toilet?

A. In some toilets it is.

Q. 39. Well, isn't it in that car?

A. No sir.

Q. 40. What became of that old tin cup you used to have in there?—wasn't it there that day?

A. Don't remember whether it is an old tin cup or new one; they put them in first one car and then the other.

Q. 41. My question now, in that car if you did not have a tin cup for drinking.

A. Yes, we use tin cups for drinking.

Q. 42. Wasn't that right at the corner of this toilet?

A. There is a cooler at the corner of the toilet, yes sir.

Q. 43. Now, if I understand you, originally they just had one partition across here, and at your suggestion they put in another so as to leave this space for a smoker?

A. Yes sir.

Q. 44. I will ask you if it is not a fact that there are only
71 four seats in there—two on this side, and two on that?

A. Yes sir.

Q. 45. Now, this is a swinging door, isn't it?

A. No, they are fastened; that is, they have a catch.

Q. 46. You didn't allow any colored people to ride in this first part of the coach?

A. Not on that trip, no sir.

Q. 47. You had no place for second class passengers on that coach did you?

A. No sir.

Q. 48. You consider that the butcher could put his boxes in here, in this coach, and still call that first class, would you?

A. They can put them in the ladies' coach if they had room.

Q. 49. Did he do it?

A. He can.

Q. 50. Did he do it?

A. No sir.

Q. 51. Did he ever have them in there?

A. Yes, they have had them in there.

Q. 52. Why didn't he that day?

A. Because there was enough room here. Because in that car there was more passengers than in this department; there was so many.

Q. 53. Did he put his butcher stuff in there before the car started before you knew how many passengers?

A. No sir.

Q. 54. What distance had the car gone before he put his
72 stuff in there?

A. Forty miles.

Q. 55. Where did he get on?

A. Olive Hill.

Q. 56. You mean to tell the jury that this white coach was so completely filled that the butcher didn't get in there?

A. No sir, I didn't say that.

Q. 57. You said the reason he didn't go in there it was so full of passengers?

A. No I said there were more passengers in there than the other,

therefore that there was more room in the colored coach rather than the other.

Q. 58. Then there was no reason to make him go in the colored coach?

A. No sir.

Q. 59. When Mr. Chiles went in there didn't you go in and ask him for his ticket?

A. No sir.

Q. 60. Didn't you look at his ticket?

A. No, sir.

Q. 61. Didn't you know he had a ticket from Washington?

A. No sir.

Q. 62. Didn't he tell you so?

A. He said he was an interstate passenger.

Q. 63. Then you didn't ask him a question as to whether he was an interstate -assenger or not?

A. No sir.

Q. 64. Didn't he ask you to look at his ticket?

A. No sir.

73 Q. 65. What did you understand him to mean when he said he was an interstate passenger?

A. I don't know, first——

Q. 66. When Mr. Chiles said to you the reason he did not want to go out of that coach was he was an interstate passenger, and that he knew his rights and wanted to be protected, what did you understand him to mean?

A. I understood Mr. Chiles to mean the same as anybody that he came out of the state.

Q. 67. You told the jury that you had instructions from your company to make him go out and go in the colored passenger coach whether he was an interstate passenger or not?

A. No sir, I didn't say that.

Q. 68. I don't think you understood Mr. Ridgeway what you did say about that?

A. We had instructions to separate the races.

Q. 69. Whether they were interstate or not?

A. No part of that in the instructions.

Q. 70. Why is it when Mr. Chiles told you he was an interstate passenger that you went to the office for advice?

A. Simply I wanted them to know of the occasion, and if I was wrong I wanted instructions on it.

Q. 71. Wasn't it because you knew at that time that the court had decided as to your road that this didn't apply to interstate passengers?

A. No sir.

74 Q. 72. You didn't know.

A. No sir.

Q. 73. And you hadn't been so advised?

A. No sir.

Q. 74. You wanted to be sure—did you always do that before you put colored passengers in the other coach?

A. No sir.

Q. 75. Why did you do it that time?

A. Because I was there where the officials could advise.

Q. 76. Now, I understand when you went to the officials that they went to the lawyer's office?

A. They asked advice from Mr. Wallace; that is all I know.

Q. 77. Is he a lawyer?

A. Yes sir.

Q. 78. During all that time had a crowd collected there? White people to see this thing well done?

A. No sir.

Q. 78. Five or six people come there?

A. There was quite a crowd around the depot, same as is always.

Q. 79. Didn't they go in the car at the same time that you and the policeman came in?

A. The policeman did not go in with me.

Q. 80. Well, didn't he go in at the same time that you did?

A. He went in the other end.

75 Q. 81. Didn't four or five of those bystanders go in the same time you did?

A. No sir, only employees of the Company; train master's clerk and a brakeman.

Q. 82. Go in with the policeman?

A. I don't know whether he came in with the policeman.

Q. 83. What did the train master's clerk go in for?

A. I can't answer for him.

Q. 84. Who was the other fellow?

A. Brakesman.

Q. 85. Not connected with your train?

A. No sir, but in the passenger service.

Q. 86. You had two brakemen, didn't you?

A. No sir.

Q. 97. Now, isn't it a fact that the policeman came in at one end of that car and this train master's clerk and brakeman came in at the other?

A. I won't say whether the brakeman came in at the other; the train master's clerk and myself did.

Q. 98. Was it arranged on the outside that part of you would go in at one end, and part at the other?

A. No, sir, it was arranged for the policeman, if I needed him, to be within call.

Q. 100. What did you want with a policeman? Hadn't you changed them from the white coach to the colored one many times without a policeman? What did you want with a policeman this time?

A. Simply because he was on hand; if he is not on hand I have to act as officer myself.

76 Q. 101. If I understand, it was arranged if you beckoned to the policeman, he was to come?

A. I didn't say anything about beckoning him; I said if I needed him I would call him.

Q. 102. Now, when you went to Mr. Chiles the second time, after making all these arrangements, consulted this lawyer, &c., what did you say?

A. I asked him if he still refused to vacate and go in the compartment set aside by the state of Kentucky.

Q. 103. That was your question?

A. Yes.

Q. 104. Did you just say it in about the same manner you do now—I want to know if you still refuse to vacate and go in the compartment set aside by the State of Kentucky?

A. I said do you still refuse to go in the compartment set aside by the state of Kentucky, just in the ordinary way; and he said, "I am an interstate passenger; I know my rights; I am a lawyer and you will have to force me;" and I said you refuse, and he said, I do. I called the officer and he came, and I said, escort this gentleman to the compartment set aside for his race.

Q. 105. And you say, the officer, without touching him, picked up his baggage, and said, come on?

A. Said, you will have to go in the other compartment.

Q. 10*3*. You didn't employ the officer to carry the fellow's baggage? Why didn't the brakeman do that?

77 A. The brakeman is not employed to carry the baggage.

Q. 104. Why didn't you do that?

A. I don't know as I had any particular reason why.

Q. 105. What part of the car was he in?

A. About in the center, or possibly near the two seats ahead of the center; I won't say the exact position.

Q. 106. He wasn't in a seat with a lady?

A. No sir.

Q. 107. He wasn't in a seat with a white man, was he?

A. No sir.

Q. 108. Didn't you notice he was sitting there reading?

A. Yes sir.

Q. 109. Didn't you notice that he was neat in his appearance? Did you see anything lacking in neatness in his appearance?

A. No sir.

Q. 110. Did you notice he had an umbrella and overcoat?

A. I know he had an overcoat; I don't remember about the umbrella.

Q. 11*0*. And you noticed he had two hand satchels?

A. Yes sir.

Q. 111. Were they neat in character?

A. Yes sir.

Q. 112. They were not rough and filthy in appearance?

A. No sir, they were clean.

Q. 113. You did not ask any other passenger to get up out of that car and go in the other?

A. I am not required——

78 Q. 11*3*. I say you did not do so?

A. No sir.

Q. 114. Now, then, in order to get to the car you had to pass

through the first half that was occupied as the white men's smoker?

A. No, sir.

Q. 115. You did do it?

A. Yes sir.

Q. 116. Walked right on through that car?

A. Yes, that is, Mr. Chiles and the Officer and I won't say—I don't remember whether I went through or got down off the step and went after orders.

Q. 117. Did you ever get his ticket?

A. Yes sir, after we started out.

Q. 118. Didn't you notice that was a ticket carrying him from Washington to Lexington?

A. I noticed it was a ticket carrying him from Washington to Lexington.

Q. 119. Didn't you notice it was a first class ticket.

A. I didn't notice it read first class, but I know it was a first class ticket.

Q. 120. And you believed that he had that kind of ticket when you made this arrangement for the policeman to take him out?

A. I didn't know anything about the ticket—he could pay his fare or give me his ticket.

Q. 120. You were just moving him out of there because he was a colored man?

A. On account of his race.

Q. 121. That was the only reason?

79 A. That was all, sir.

Q. 122. You did not indicate, did you, to the policeman where to take him?

A. Yes sir.

Q. 123. Where did you tell him to take him?

A. To the compartment set aside for his race, by the state.

Q. 124. Well, now, do you know why he did not stop in this little central portion here?

A. He could have stopped there if he had wanted to, but that was optional.

Q. 125. Do you know why they did not stop there?

A. No sir.

Q. 126. Did the clerk and the other brakeman follow them in there?

A. No sir.

Q. 127. Didn't they follow them?

A. I didn't see anybody come in there, in that car.

Q. 128. Now, did not you notice that crowd there and that the white people were all noticing that he was being moved from there?

A. No sir, only the people immediately around him in the coach in which our conversation took place.

Redirect examination:

Q. 1. Something was said about the length of the car—of one of these passenger coaches—what is the length?

80 A. They run—I think that class of coaches will run nearly sixty feet; between fifty and sixty feet; they vary, that is

differently built, the coaches; some with the ordinary vestibule and some with the Bell vestibule—I mean from the end of the coach, or entrance.

Q. 2. What is the relative number of white and colored passengers on that train—what is the proportion?

Plaintiff objects, which objection is sustained by the court; to this ruling of the court the defendant excepts.

Q. 3. On this occasion was the colored compartment in which Mr. Chiles was required to go crowded or overcrowded?

A. No sir.

Q. 4. This car runs from both directions, does it not?

A. Yes sir.

Q. 5. Is it turned around?

A. No sir.

Q. 6. In going east, going from Lexington, which end is for the white people, and which for the colored people?

A. Coming from Ashland the east end is used, or front end.

ATTORNEY FOR PLAINTIFF: You don't have the same one marked white each time?

A. No sir, we change the sign.

Q. 7. This rear compartment had a smoker—smoking compartment for white men?

A. I think it had; I won't say for certain.

Q. 8. What was the name of this policeman?

A. Riddle.

81 Q. 9. Do you know whether he is living or dead now?

A. He is dead; died short while after this occurrence.

Recross examination:

Q. 1. As I understand you, as you go from Lexington you use the front end of the car for white passengers for a smoking department?

A. No sir, the front end for the colored people.

Q. 2. What I want to get at is this—this is the east end as you go from Lexington, do you use that for colored people, and this end for the white smoker?

A. Use it for white people. They smoke in there.

Q. 3. Isn't it the regular smoking department for white people?

A. O, it is used for that, yes sir.

Q. 4. When you come back you just change the sign and put colored people in that which had been used as the white smoking compartment as you went up?

A. Going east this front end of the car—going west we use this end.

Q. 5. So then, as I understand, the white people interchangably use both ends of that car for smoking purposes?

A. Or any other car.

Q. 6. Well, I am speaking—They did not use this other car at all for smoking?

82 A. Sometimes they did.

Q. 7. You didn't use it on this occasion?

A. No sir, not on this occasion; it is used for a smoking car on different occasions.

BROWN, R. J., who having been first duly sworn, testified on behalf of the defendant, as follows:

Q. 1. Are you a brakeman for the C. & O. Railway?

A. Yes sir, in the passenger service.

Q. 2. How long have you been?

A. About five years.

Q. 3. Were you brakeman on that train, 23, April 1904, when the occurrence took place that we are investigating here, with Mr. Chiles?

A. Yes sir.

Q. 4. Where did you see him?

A. Saw him as he went to get on the train that day.

Q. 4. Tell the jury exactly what took place.

A. I was standing with my back to the sleeper helping passengers on the train and this gentleman came up behind me and wanted to get on the coach where I was helping passengers on, and I took hold of his arm as he stepped up on the step and said "take the car ahead, please"; and he went right on in the coach and I went and told the conductor about it.

Q. 5. When you told him to take the car ahead, please, did he say anything to you?

83 A. No sir, never looked around; did not pay any attention to me; just walked right on up the steps, and I went and told the conductor.

Q. 6. Between what two coaches were you standing?

A. Well, I was standing between the smoking department and what we call the Ladies' Coach; only had two coaches on the train; I was standing between the two coaches; standing at the steps at the rear of ladies' coach.

Q. 7. Did you go into the coach where he was with the conductor when he first went in there?

A. No sir, I stayed on the outside.

Q. 8. Were you in there at all? Did you hear any conversation at all between him and the conductor?

A. No sir, I didn't hear what was said.

Q. 9. You were not on the inside of the car at all?

A. Not on the inside at all; I was just standing there.

Q. 10. I will get you to describe the compartment which was used for the colored people on that forward car that day?

A. Well, it is a coach built just the same as the other coach with the exception of a partition between them, the front portion of it is used for the colored passengers, and the rear portion for the smoking department,—the coach is exactly the same as the other, with the exception of two partitions in the middle.

Q. 11. What were there two partitions in the middle for?

A. For a smoking room for colored passengers.

84 Q. 12. Was there any difference in the character or appearance of the seats in that colored compartment and those in the car reserved for white passengers?

A. No sir, no difference.

Q. 13. Was there a toilet room in that car?

A. Yes sir.

Q. 14. Any difference in the character of the toilet room?

Plaintiff objects; Plaintiff withdraws the objection.

Q. 15. In that toilet room, from the toilet room in the white car?

A. No sir.

Q. 16. I will get you to state to the jury whether there was a washstand?

A. Yes sir, there was a washstand in the car—yes sir.

Q. 17. Towel and soap there?

A. Yes sir.

Q. 18. Water cooler?

A. Yes sir.

Q. 19. Any difference in the wood work of the car?

A. No sir, just the same.

Q. 20. Any difference in the electric lights of the cars?

A. No sir, all the same.

Q. 21. Was there any difference as to the cleanliness of that car and the white car?

A. No, I don't know as there was.

85 Cross-examination.

Q. 1. You say that those two cars were exactly the same, Mr. Brown?

A. Yes sir.

Q. 2. What was the number of the car?

A. I don't remember what was the number.

Q. 3. Why did you call one the ladies' coach and the other the smoking coach, if they are both the same?

A. Well, there is no ladies ride in the smoker end of the head car.

Q. 4. Why not?

A. It is used for smoking room.

Q. 5. Don't you use first one end, and then the other end for a smoking room.

A. It depends on which way we are going.

Q. 6. This whole car is a smoking room, isn't it?

A. No sir.

Q. 7. Use one end as you go up and the other end as you come down?

A. Yes sir.

Q. 8. Where was the washstand in that car?

A. Well, the washstand was in the front end of the car on the left hand side.

Q. 9. Now, take this as a diagram of the car and suppose we are

going up from Lexington, going east, where is that washstand and room—washstand?

A. I don't know there is any in that end of that car.

Q. 10. Don't you know there was never one?

A. Couldn't say positive about that.

86 Q. 11. Then didn't you tell Mr. Shelby it had a wash basin, a towel and everything—you didn't mean that?

A. Yes sir.

Q. 12. Where was it?

A. In the colored department coming west.

Q. 13. Now then, which part was it in going east?

A. It was in the smoking department going east.

Q. 14. Then if I understand your language, the rule of your Company is that there is no wash room prepared for the colored department as you go west—go east?

—— objects which objection is overruled by the court; to this ruling of the court the defendant excepts.

Q. 15. Was this wash basin in the toilet room where the closet was, or was it on the outside?

A. I don't remember about that.

Q. 16. Don't remember?

A. How is it fixed.

Q. 17. Don't you know as you stood there between what is known as the smoker and ladies' coach, where the men and women both went, that there was a separate smoking department in there cut off in which gentlemen would sit and smoke?

A. There is a small smoking room in there, yes sir.

Q. 18. There is no such smoking room in the other car, is there?

A. Well, they are not alike; no sir; the smoking room in the other room has the seats cut off in the middle.

87 Q. 19. In the center?

A. Yes sir.

Q. 20. I will ask you whether this car has a toilet room at each end?

A. Yes sir.

Q. 21. Has one at each end?

A. Yes sir.

Q. 22. I mean the one that you divide off for a smoker?

A. Yes sir.

Q. 23. Has a toilet at each end?

A. Yes sir.

Q. 24. But it only has a wash basin at one end?

A. Wash basin at one end.

Q. 25. Where is that wash basin located with reference to the toilet room?

A. I don't remember whether the wash basin is in the toilet room or outside of it; some are in the inside and some are not.

Q. 26. Why is it you have wash basins attached to one of the toilets and not the other?

A. I don't know; the way the cars are built, I reckon.

Q. 27. Now, don't you know that the only wash basin you have is on the inside of the toilet room?

A. Some of them are and——

Q. 28. I am talking about this car.

A. I don't remember how this car was built.

Q. 29. Then you don't remember whether there was any wash basin in the car where Chiles went or not.

88 A. I know there was a wash basin in there, but I don't remember whether it is in the inside or out.

Q. 30. Now I will ask you if in this car, this white car, the other coach, if you have not separate toilets for gentlemen and ladies? Gentlemen's at one end and ladies' at the other?

A. Yes sir.

Q. 31. Have you a separate wash basin for ladies and gentlemen?

A. Have not.

Q. 32. Have not?

A. No sir.

Q. 33. Now then in the other car where they interchange, putting the smoker in one end and then in the other, there is no ladies' toilet at all?

A. One toilet room in the car.

Q. 34. For both ladies and gentlemen?

A. Yes sir.

Q. 35. You say you did not go in the car at the time Mr. Chiles was taken out by the policeman?

A. No sir, I didn't go inside the car.

Q. 36. Why didn't you?

A. Had no particular business in there.

Q. 37. Didn't you see some of them going in one end and some the other?

A. Some I suppose; I stand at the steps and assist the passengers on the train, until the train starts.

Q. 38. Then you did not go in the coach at all?

A. No sir.

89 Q. 39. Did you see the train master's clerk go in?

A. I think I did.

Q. 40. Didn't the brakeman go in there with him?

A. No sir.

Q. 41. Didn't any brakeman go in there?

A. I didn't go in.

Q. 42. Who went in with him?

A. I couldn't say whether any body went in with him or not.

Redirect examination.

Q. 1. In which end of this compartment car did I understand you to say that the washstand was, as you come from Ashland on to Lexington?

A. In the compartment used for colored passengers.

Recross-examination.

Q. 1. The car wasn't turned around up there, was it?

A. Not that I know of.

Q. 2. Now where was it when you went from Lexington up?
A. Well, if the car wasn't turned around, it was in the rear end of the car.
Q. 3. I know, but in what part was it; by the colored people's or white smoker as you went up?
A. I couldn't say about that.
Q. 4. You say you cannot say distinctly where was it as they came back; if you can't say where was it when you went up, if the car was changed.
A. I can remember very distinctly having the gentleman
90 put in there, and I know it was in the end of the car.
Q. 5. Why you said you didn't go in there?
A. Didn't go in there while the train was standing there, but went in afterwards during the trip every time.
Q. 6. And noticed it then—didn't notice it until after this was all over?
A. O yes.

91 Fayette Circuit Court.

J. ALEXANDER CHILES, Plaintiff,
vs.
CHESAPEAKE AND OHIO RAILWAY COMPANY, Defendant.

Stenographer's Certificate.

I, Mary A. Chiles, Official Stenographer of the Fayette Circuit Court, do hereby certify that the foregoing 50 pages contain a full and accurate transcript of the shorthand notes of the oral evidence and exhibits filed in the above styled cause.
Given under my hand this 1st day of October, 1906.

MARY A. CHILES,
Official Stenographer, Fayette Circuit Court.

Examined, approved and certified to be correct, this 1st day of October, 1906.

WATTS PARKER, *Judge.*

92 And with said transcript there was filed a statement, and which is in words and figures as follows, to-wit:
The parties to this appeal are J. Alexander Chiles, appellant and the Chesapeake & Ohio Railway Co., appellee.
The judgment appealed from will be found on page 13 of the record.
Appeal granted by the circuit court.

J. R. ALLEN,
B. E. SMITH,
C. J. BRONSTON,
Att'ys for Appellant.

93 Be it remembered that at a Court of Appeals held at the Capitol at Frankfort on the 15th day of February, 1907, the following order was entered to-wit:

CHILES
v.
C. & O. RY. Co.

Fayette.

This case is ordered to be submitted.

And afterwards at a Court of Appeals held at the Capitol at Frankfort on the 16th day of April, 1907, the following judgment was entered to-wit:

J. ALEXANDER CHILES, Appellant,
vs.
THE CHESAPEAKE & OHIO RAILWAY Co., Appellee.

Appeal from the Fayette Circuit Court.

The Court being sufficiently advised, it seems to them there is no error in the judgment herein.

It is therefore considered that said judgment be affirmed which is ordered certified to said court.

It is further considered that the appellee recover of the appellant its costs herein expended.

And on said date the Court delivered the following opinion:

94 Court of Appeals of Kentucky.

APRIL 16, 1907.

(To be reported.)

J. ALEXANDER CHILES, Appellant,
vs.
CHESAPEAKE & OHIO RAILWAY Co., &c., Appellees.

Appeal from Fayette Circuit Court.

Opinion of the Court by Carroll, Commissioner.

Appellant, a negro, bought a first-class ticket over the appellee's line of railway from Washington, District of Columbia, to Lexington, Kentucky. At Ashland, Kentucky, on the line of railway between Washington and Lexington, all passengers for Lexington, except those occupying sleeping cars, are required to leave the train on which they come from Washington and get on a train that leaves Ashland for Lexington. When the Washington train, upon which appellant was a passenger, arrived at Ashland, in company with the

other passengers in the day car in which he was riding, he got out for the purpose of getting on the Lexington train. This Lexington train is made up of four coaches, the first, and the one nearest
95 the engine, being a combined baggage, mail and express car; the second is a passenger coach divided by board petitions into three compartments, one of these compartments located in the end of the car is set apart for colored passengers, the middle compartment is for the use of colored passengers who smoke, and the end compartment is for the accom-odation of white persons who smoke; the third car is a passenger coach intended for the use of white ladies and gentlemen; the fourth car is a sleeping car that runs through from Washington to Lexington. Appellant when he attempted to get on the Lexington train was told by the brakeman to go in the colored apartment. This he declined to do, and walked in and took a seat in the third coach set apart for the exclusive use of white passengers. In a few moments the conductor came in and asked the appellant in obedience to a rule of the company to go forward in the apartment set apart for colored passengers, but he refused to do so, stating that he had bought a through first-class ticket from Washington to Lexington, and was an interstate passenger who knew his rights, and that the separate coach law of Kentucky did not apply to him, and declared his intention of retaining the seat he occupied. Thereupon, the conductor summoned a policeman, who also requested appellant to go in the other car, and upon his refusal, he was informed that he would be compelled to leave the car in which he was seated. Appellant, yet insisting upon his right to remain in the car in which he was, followed the policeman
96 into the colored passenger coach.

Afterwards he brought this action against the Company for damages, alleging in his petition that he had purchased in Washington a first-class ticket for transportation to Lexington, Kentucky, and that he was forcibly and wrongfully ejected from the first-class car in which he was seated, thereby subjecting him to great mortification and humiliation, to his damage in the sum of ten thousand dollars.

In its answer appellee set up that the car from which appellant was required to remove at Ashland was one set apart under its rules and regulations exclusively for the transportation of white passengers, and the car into which he was compelled to go was under its rules and regulation set apart exclusively for the accommodation and transportation of colored persons; that it was a first-class car, equal in quality, convenience and accom-odation to the car appellant was directed to remove from.

A reply was filed, controverting the affirmative matter in the answer, and upon a trial before a properly instructed jury a verdict was returned for appellee.

There is really no material issue of fact involved in the case. No force or violence, or rude or oppressive conduct, was employed by the agents of appellee in removing appellant from the car in which he was seated to the car set apart for colored persons. And
97 except that the car into which he was removed is divided by partitions into three compartments, it was substantially

equal in quality, convenience and accom-odation to the car into which he first seated himself, and the compartment into which appellant was directed to go was cleanly and ample for his accom-odation, and equipped with the same conveniences as the other passenger coach on the train from which he was ejected. It is admitted that sections 795-801 of the Kentucky Statutes, requiring all railroad companies to furnish separate coaches for transportation of white and colored passengers and imposing upon the company and conductors a penalty for refusing or failing to carry out the provisions of the law, does not apply to appellant, who was an interstate passenger; it being conceded that the Statute is only operative within the territorial limits of this State, and effective as to passengers who travel from one point within the State to another place within its border. The question presented for our consideration is, has a common carrier, such as a railroad company, the right, independent of the Statute, to establish reasonable rules and regulations for the transportation of passengers, and to establish such rules and regulations as will require white and colored passengers, although they may be interstate, to occupy separate coaches or compartments upon the train. To put it in a simpler form, and one that will present squarely the issue involved, has a railroad company, within
98 this State, independent of any statute, the right to adopt and enforce rules and regulations requiring colored passengers, although they may be interstate, and solely because of their color and race, to occupy coaches or compartments in coaches separate and distinct from those occupied by white persons? Both of these queries must be answered in the affirmative. A passenger who purchases a ticket entitling him to transportation on a railroad, and who conducts himself properly, and is not laboring under any mental or physical infirmity or disease that would render it unsafe, improper or dangerous to carry him, has the right to demand that the carrier shall furnish him with accom-odations and conveniences substantially equal to those given to other passengers holding similar tickets. But, subject to these qualifications, a railroad company may adopt and enforce reasonable rules and regualtions for the transportation of passengers, such as requiring that those who smoke shall occupy a certain car or compartment, or that gentlemen not accompanied by ladies shall take a car other than the one set apart for the exclusive use of ladies. Many other regulations not here necessary to mention may be made; the rule being that the passenger takes his ticket with the understanding that he will conform to all the reasonable regulations of the carrier as to the conduct of the carriage, it being understood and
99 recognized as the law that the carrier assumes the responsibility of the reasonableness of the regulation, and if it should be held unreasonable the carrier will be liable in damages to the passenger against whom it was enforced. Hutchison on Carriers, section 1077. In 6 Coy., page 545, the rule supported by numerous authorities is thus stated:

"Without regard to any statutory authority, a carrier of passengers has under the common law the right to make reasonable rules

and regulations for the conduct of his business. The passenger is not bound to comply with the rules and regulations if they are unreasonable, but such rules as tend to the comfort, order and safety of the passenger or passengers may be made and enforced if reasonable with reference to the subject matter and uniform in respect to the persons affected. As the validity of a regulation does not depend upon contract, express or implied, but upon the general power of the carrier to control his business, therefore there is not the necessity which exists with reference to a special contract regulation, of bringing it home to the passenger so that his assent thereto shall appear. The passenger is bound to take notice of reasonable regulations."

Resting upon this ancient and general doctrine of the right
100 of carriers to establish reasonable rules and regulations for the transportation of passengers, it has come to be a well settled principle of law that in the carriage of white and colored passengers, carriers have the right, independent of any statute, to enact rules and regulations requiring colored persons solely because of their race and color to occupy coaches and compartments in coaches separate and distinct from those set apart for and occupied by white persons.

And this rule extends to all passengers, without reference to whether they are intrastate or interstate. This principle does not distinctly involve a discrimination against the colored race, but rests more particularly upon the right to separate and classify the races, affording to each substantially equal comforts, conveniences and accommodations. Carriers can not discriminate against a passenger merely because of his color. The colored man who conducts himself properly, and in other respects has the right to be received as a passenger, and who purchases a first-class ticket, is entitled to demand that the carrier shall furnish him carriage substantially similar in quality, convenience and accommodation to that afforded to white persons having similar tickets. But, whilst the carrier cannot in the manner of service or accommodations discriminate between passengers holding similar tickets solely on account of their color, it has the right to separate and classify them. There is a wide difference between classification and regulation involving a separation of the

races, and a discrimination between them. When there are
101 two cars in a train, or two compartments in a car, substantially alike in quality, convenience and accommodation, neither white nor colored passengers have the legal right to complain that they have been discriminated against merely because the carrier required each race to occupy a car or compartment set aside for its accommodation. And this upon the ground that the carrier in the conduct of his business and in the interest of the public may enact and enforce reasonable rules and regulations to preserve peace, maintain order, promote comfort, and contribute to the pleasure and convenience of the passengers. That there is a natural, well marked difference between the white and colored races goes without saying. That this racial distinction in many places and with many persons

develops into a deep-seated antipathy between the races, resulting too often in conflict and bloodshed, is a matter of common knowledge. For this distinction, the consequences that flow from it, and the difficult problems that grow out of it, appellant is in no wise responsible. It had its origin in the creation of the races, and is firmly established as a part of the social and domestic order and economy of the country, and the man or set of men of either race who attempts to ignore or obliterate these distinctions and differences undertakes an impossible task. This racial distinction, and the resulting classification, is recognized by legislatures, authorized by courts,
102 sanctioned by custom, and approved by an enlightened public opinion. It is not confined to any community, State or Nation, but is found wherever the two races abound in sufficient numbers to make noticeable the impassable chasm that separates them. In the home, the school, the church, the public place—in truth, everywhere—it exists. These observations are not set down in any spirit of unkindness or hostility to the colored race, or with a view to create or encourage discrimination or repression that will place obstacles in the way of their improvement or advancement, but rather to note an irremovable and remediless condition that must be acknowledged and that will steadfastly be adhered to.

This question of the right of carriers to classify and separate white and colored passengers has been the subject of consideration by a number of courts, as well as the Supreme Court of the United States, and there is practically unanimity of opinion in the decisions relative thereto, the leading case on the question perhaps being that of Westchester & Philadelphia R. Co. v. Miles, 55 Pa., 209, 93 Am. Dec., 744, in which it is stated:

"The right of the carrier to separate his passengers is founded upon two grounds, his right of private property in the means of conveyance, and the public interest. The private means he uses belongs
wholly to himself, and imply the right of control for the pro-
103 tection of his own interest as well as the performance of his public duty. He may use his property therefore in a reasonable manner. It is not an unreasonable regulation to seat passengers so as to preserve order and decorum and to prevent contacts and collision arising from natural or well known customary repugnances, which are likely to breed disturbances by promiscuous sitting. It is much easier to prevent difficulty among passengers by regulation for their proper separation than it is to quell them. The danger to the peace engendered by feeling of aversion between individuals of the different races cannot be denied. It is the fact with which the company must deal. If a negro takes a seat beside a white man, or his wife or daughter, the law cannot repress the anger or conquer the aversion which some will feel. However unwise it may be to indulge the feeling, human infirmity is not always proof against it. It is much wiser to avert the consequences of this repulsion of race by separation than to punish afterwards the breach of the peace it may have caused."

And the court held that the rights of the carrier to adopt and en-

force reasonable rules providing for the separate carriage of white and colored passengers was entirely within its powers. And
104 this case was approved by the Illinois Supreme Court in Chicago & Northwestern Ry. Co. v. Williams, 55 Ill., 185, 8 Am. Rep., 641.

In Hall v. De Cuir, 95 U. S., 505, the Supreme Court of the United States—a case involving the right of the carrier to classify and separate white and colored passengers, in substance held that the carrier so long as the conveniences and accommodations furnished were substantially equal, had the right to adopt reasonable rules and regulations for the separation and classification of white and colored passengers.

In Plessy v. Ferguson, 163 U. S., 537, the Supreme Court, in upholding the validity of a statute similar to the one in force in this State compelling railroad companies to provide separate coaches or compartments for colored people, recognized the right of carriers to establish reasonable rules and regulations for the separation and classification of the races, although in that case the question of the rights of an interstate passenger was not involved. To the same effect is the opinion of that Court in Chesapeake & Ohio Railway Company v. Commonwealth of Kentucky, 179, U. S., 388.

In "The Sue", decided by the federal court, and reported in 22 Fed. Rep., 843, where the question involved was the right of a carrier to separate white and colored passengers, Judge Morris said:

"The great weight of authority, it seems to me, supports the doctrine that to some extent at least, and under some circum-
105 stances, such a separation is allowable at common law, and I think it is not going too far to say that such is the decided leaning of the Supreme Court of the United States as expressed in the opinion pronounced in Hall v. De Cuir. The Supreme Court appears to treat the question as one with regard to which reasonable usages which now exists can only be controlled by legislation, and holds that if public policy requires such legislation, it must come from Congress. It has been argued that the constitutional amendments, which assure to colored people all political rights to citizens of the United States and of the States, and were intended to having obliterated color as a distinction with regard to political rights, of necessity makes such color discrimination unlawful in carriers as against the declared public policy of the nation. In view of the authoritative interpretation of those amendments I cannot so hold. It is a question with which citizenship had but little to do. If it was found that naturalized citizens of English or Irish birth or the French and German nationality, interfered with such others' comfort, or with the discipline of the boat when occupying the same sleeping cabins, the court might well find a regulation which
106 enforced a separation between them was reasonable and therefore lawful. But to say that regulations based on conditions of race or color may be lawful, is not to say that every such regulation can be upheld. The regulation must not only be reasonable in that it conduces to the general comfort of the passengers, but it

must not deny equal conveniences and opportunities to all who pay the same fare."

In Houck v. Southern Pacific Ry. Co., 38 Fed. Rep., 226, the court said:

"The defendant contends that the evidence shows that the front car which was set apart by the company for colored people was as safe and was substantially equal in its conditions to the rear car and which he was denied entrance. These recitals make up the issue of law and fact. In accordance with the contention of these counsel, the court charged the jury that a common carrier, a railway company, may or might be under a proper showing of facts justified and authorized in law in the management of its complicated interests in setting apart one or more coaches for the use exclusively of white people, and to set apart other cars for the use exclusively of
107 colored people: but when the management undertakes to carry out such a rule, it is charged with the duty of giving or furnishing to the colored passengers who pay first-class fare over the line a car to ride in as safe and substantially inviting to travel in as it furnishes to white passengers. The defense having shown some facts in relation to the population along the railway, and as to the kind of character of persons who often become passengers on their trains, which were thought by the court to be sufficient to authorize the management to require by its rules that the rear car or one of the cars in the train should be occupied exclusively by white people. The jury were directed to consider for the purposes of this case that the defendant company was justified in law in the enforcement of such a rule. And the plaintiff cannot complain of an injury coming to her because she was denied entrance to the rear car, provided it was shown satisfactorily to them that the car into which Mrs. Hough was told to go by the conductor was as safe and substantially as comfortable in its conditions as the car to which she was denied admission."

In Murphy v. Western Atlantic R. Co., 23 Fed. Rep., 637, Judge May said:

108 "I believe that where the races are numerous, a railroad may set apart certain cars to be occupied by white people, and certain other cars to be occupied by colored people so as to avoid complaint and friction; but, if the railroads charge the same fare to each race, it must furnish substantially alike and equal accommodations. A railroad company may make all needful rules and regulations in the conduct of its affairs, but such rules must be reasonable and impartial—fair to all. If it separates passengers upon the color line, it must treat each alike from the intrusion of the other. If it give to white people one end of the car, and colored people the other end, and exclude colored people from the white end, it must also exclude white people from the colored end. A passenger has no right to select the car upon which he will travel without direction or interference on the part of the carrier. When he proposes to take a train, the trainmen may designate the car which he may enter, and he has no right to complain if such car is as comfortable and convenient in its equipment as the other of like character."

It will thus be seen that the principal matter to be considered in cases of this character is not the color of the passenger, but
109 whether or not he has been furnished accommodations substantially equal in quality, convenience and comfort to those holding similar tickets. This issue was fairly submitted to the jury by the instructions of the court, and their finding was, in effect, that no discrimination was made against appellant in respect to the accom-odations furnished him.

The judgment of the lower court must be affirmed.

C. J. Bronston, Allen & Duncan, B. E. Smith, J. A. Chiles, for appellant.

John T. Shelby for appellee.

110 And afterwards at a Court of Appeals held at the Capitol at Frankfort on May 16, 1907, the following order was entered, to-wit:

CHILES
v.
C. & O. RY. CO.

Fayette.

Came the appellant by counsel and filed a petition and moved the Court to grant a rehearing which motion and petition is submitted.

The petition named in the foregoing order is as follows to-wit:

111 J. ALEXANDER CHILES, Appellant,
vs.
CHESAPEAKE AND OHIO RAILWAY COMPANY, Appellee.

From Fayette Circuit Court, 1907.

Petition for Rehearing.

If this Honorable Court had, in its opinion, rendered by its Commissioner, legally disposed of the questions of law properly presented in the record of this cause, for adjudication before it, this petition for a rehearing thereof would not have been necessary, and we feel confident, that upon careful examination and due consideration of the record it will readily perceive that the said decision would have been in favor of, instead of against appellant.

The said opinion is apparently exhaustive of some phases of some of the errors of law, objected, and excepted to, at the time of the trial, which were decided adversely to appellant, "affecting materially his substantial rights;" and, although said opinion embodies some principles, that will, doubtless, remain the law in Kentucky, on cases of this character, yet notwithstanding all this, the Court did not decide, nor has it legally determined every "error of law" properly raised, and noted in said record, as aforesaid, by appellant.

112 The issues involved, herein, are very vital, important and far-reaching, the decision of which, affect and concern, not

only the appellant's legal rights, but also those of his race, likewise those of the white race, as to what place each race must respectively occupy, as passengers on railroad trains in Kentucky, after each shall have been required and compelled to pay equal fare for first-class accommodation, and as to whether railroads shall be allowed to make a "difference or discrimination, in the quality, convenience and accommodations in the cars or coaches or partitions set apart for white and colored passengers."

In its opinion the Court says that they shall not and cannot discriminate; but, even in deciding thus, it has neither expressly nor by necessary implication legally determined the case at bar. What it decided as to this will, doubtless, be the law as aforesaid, yet we feel certain that, if it had in justice to itself and in substantial justice to appellant, carefully examined and considered the whole record, that then it would have, in addition to the principles of law already enunciated, rightly disposed of every error of law, properly presented, and upon one or more of them, it would have, we think, in common justice, rendered its decision, in favor, instead of against appellant.

In said record, appellant legally complained of the "rejection of competent and relevant testimony" for him; of the admission of "irrelevant testimony" against him, of the Court's refusing to give instructions asked for by him, and thereafter giving misleading and erroneous instructions; and of the verdict's being against the law and evidence, same being the result of bias and prejudice; and the Court's refusing to grant new trial &c.; and besides these, he now complains that this Court, in affirming the decision of the lower court, without due legal consideration of the record presented, has meted out to him not even the substantial justice, which the law of this State requires.

113

When errors of law are committed in the trial of a cause, same decided adversely to the prejudice of one's substantial rights, then and there objected and excepted to, by him, and same couched in the record and brought before an Appellate Court for adjudication, it then becomes the unequivical, imperative, bounden duty, legally incumbent upon said Court, whether deciding such issues itself, or by a Commissioner, in justice to itself and for the furtherance of justice of the pending cause, before it affirms or reverses the judgment of the trial court, for it, First, to ascertain from said records "every error of law;" and, Second, thereafter affirmatively or negatively, and expressly, specifically, properly and legally to dispose of each said error.

In the record before this Honorable Court, compared with its decision, it is manifestly evident that it did not thus dispose of the error of law, stated in Motion and Grounds for New Trial, to wit:

1. The admission of incompetent and irrelevent testimony against him, and exclusion and rejection of competent testimony for him (No. 2, Motion and Grounds for New Trial).

114 *Relevant Testimony of Appellant Excluded.*

(See Stenographer's Transcript.) To-wit:

Page 1, Ques. 6. For what purpose? Page 2, Ques. 14. Was there any interference with you in going through the state of Virginia? Page 5, Ques. 31. You heard Mr. Shelby's statement, that you complained that you were put from the white car, that you were not allowed to ride in the car with white people. Was that your complaint? Page, 6, Ques. 32. Did you have any objection to riding in the colored car? Page 6, Ques. 33. Did you in your conversation with this conductor or with this officer, did you say at any time that you were entitled to ride in the white car? Page 6, Ques. 36. What did your ticket call for?

Appellant states that at no time, when talking to appellee's agents or servants did he use the words to-wit: White or white car, nor any such, but that on the contrary the words he used were, to-wit: that he was an interstate passenger and had first class ticket and was entitled to first class accommodations. The words white and white car were intentionally used and injected into the trial of this cause by appellee and its agents, etc., for a pecu*liar*, predetermined desired purpose, to-wit: to arouse the slumbering race passions and prejudices; and appellee foreknew at the time, that appellant had none of his own race on the jury, who could after such feeling had been thus set in action, when it retired to its room to consider of its verdict to explain therein, to them appellant's true feeling,

115 etc., and thereby help to assuage the selfish feelings aroused and appealed to by appellee in order to obtain an unjust and favorable verdict. Appellee accomplished its ultimate final purpose as the record shows. Such injustice! "We have no might against this; but our eyes are upon God."—2 Chron. 20:12.

But notwithstanding all this, yet if appellant had only been permitted by the court, thereafter to answer the said relevant testimony, rejected we are confident that much, if not all of the prejudice and bias feeling aroused in the minds of the jury against appellant, by appellee's counsel would have been dissipated, and certain that the verdict rendered would have been, not against, but for him. It has been expressly decided by this Court that "where evidence has been improperly excluded, a new trial will be granted." (Coleman v. Allen, 26 Ky., 229.)

2. Because it did not thus dispose of error (No. 4 Motion and Grounds for New Trial.) to-wit: Refusal of the court to give the instructions asked for by appellant; and omission of the court to couch the like or substantial instructions in its own instructions given to the jury, especially instruction No. 1 on interstate passengers, &c., to-wit:

"It being admitted by the pleadings that the plaintiff did purchase a first class ticket from Washington in the District of Columbia to Lexington in the State of Kentucky, the court instructs the jury that at the time he was removed from the coach he was riding in from

Washington to Ashland, to the colored coach at Ashland he
116 was an interstate passenger; and the court further instructs the jury that defendant had no right to compel the plaintiff to remove from the one coach into the other; and if the jury believe that the defendant's employees, agents or servants, by the use of force, or by threats or menace, or by duress, compelled the plaintiff to move at Ashland, Kentucky, from the car in which he had ridden from Washington into the coach set apart exclusively for colored passengers, they should find for the plaintiff such damage as he may have sustained by reason thereof." (Layson v. Galloway, 7 Ky. 100.)

3. Because it did not thus dispose of error (No. 3, Motion and Grounds for New Trial,) to-wit: The court's giving improper, misleading and erroneous instructions.

4. Because it did not thus dispose of errors (Nos. 1 and 5, Motion and Grounds for New Trial.) to-wit: The verdict contrary to the law and to the evidence; that the verdict was the result of bias and prejudice, palpably unjust, &c.

In Gray vs. Parrott & Jones, decided this Court, Feb. 12, 1906, Ky. L. R. 777, (No. 8 advance sheets) said "One of the grounds, provided by the Code for a new trial is that the verdict is not sustained by sufficient evidence. But this Court will reverse on that ground only when the verdict is clearly and palpably against the weight of the evidence." (Thompson vs. Thompson, 93 Ky.
117 435; Mutual Life Ins. Co. — Thompson, 94 Ky. 253; McCoy v. Martin, 34 Ky. 580; Mobile & Ohio Ry. Co. vs. Reaves, 25 Ky. Law Reporter 2236; Steele Heirs vs. Logan, 10 Ky. 394.)

5. As to error of trial court not granting new trial on said motion.

Appellant now asks the attention of the Court to some of the evidence in the record, especially on the point of the accom-odation furnished etc.

(See Stenographer's Transcript.)

Appellant's Evidence.

Direct Examination, Page 3, beginning with Ques. and Ans. 22, down to and including Ques. and Ans. 30 on Page 5. Cross Examination, Page 12, beginning with Ques. 62, down to and including Ques. 85 on Page 14.

Appellee's Evidence.

Evidence of Mr. RIDGEWAY:

Cross Examination Page 31, beginning with Ques. and Ans. 117, down to and including 125 on Page 32. Re-direct Examination, Begining with Ques. and Ans. 1, on Page 32; down to and including 9 on Page 33. Re-cross Examination, Beginning with Ques. 1 down to Ques. 7 on Page 33.

Evidence of P. J. BROWN:

Direct Examination, Beginning with Ques. 3 on Page 34 down to and including Ques. and Ans. 12 on Page 35. Cross Examination, Beginning with Ques. 1 on Page 36 down to and including Ques. 42 Page 39. Re-direct Examination Ques. 1, Page 39. Re-
118 cross Examination, Beginning with Ques. 1 down to and including Ques. 6, Page 40.

Besides appellant's evidence, appellee's own witnesses, incontrovertibly established the fact, that the end or compartment of the car into, which appellant was compelled by appellee to travel in, from Ashland had next previously, immediately on the trip East from Louisville to Ashland, Kentucky, been used by appellee for a smoking compartment for its white passengers and immediately on its next West trip, from Ashland to Louisville, it was then being used by appellee for first class compartment for its colored passengers, and the whole evidence in the record, properly considered, also establishes indisputably and preponderantly, that the accommodation furnished appellant by appellee was not "equal in quality, convenience and accommodations" nor were they "substantially equal in convenience comfort and safety to that which he had been required to leave."

It is true that this Court, in its opinion, says that "there is really no material issue of fact involved in the case," and that the "compartment into which appellant was directed to go was cleanly and ample for his accommodation, and equipped with the same conveniences as the other passenger coach on the train from which he was ejected," and further that "it will thus be seen that the principal matter to be considered in cases of this character is not the color of the passenger, but whether or not he has been furnished accommodations substantially equal in quality, convenience and comfort to those holding similar tickets" and that "this issue was fairly
119 submitted to the jury by the instructions of the court, and their finding was in effect that no discrimination was made against appellant in respect to the accommodations furnished him."

Yet, notwithstanding all this, appellant humbly, but respectfully suggests that, on the contrary, *that* there is evidence of appellee's own witnesses, in the record, clearly, and indisputably proving that the end or compartment of the coach, into which appellee required appellant to travel from Ashland, Ky., was the same which had been used by appellee for a "smoking car" for the accommodation of its white passengers on its trip from Louisville to Ashland and so used, by such passengers, depending solely upon the direction they are riding, and when not thus used for smoking car for white passengers, it is then used by appellee, for the first class accommodation of its colored passengers. Thus thereby conclusively proving that the accommodations furnished appellant by appellee, was not "equal in quality, convenience or accommodations" nor were they "substantially equal in convenience, comfort and safety to that which he had been required to leave."

Besides this the record also, distinctly, affirmatively and legally shows that, there are errors of law, complained of by him "affecting

materially his substantial rights," which have not been legally, expressly and specifically, nor by necessary implication and generally, disposed of by the Court. It is of paramount importance to each litigant, that the court to which he appeals for redress, hear
120 patiently and rightly his cause, presented in the record, and *that* thereafter do justice to each, in accordance with their respective showing therein. Too often we overlook some of the essentials in disposing of causes, because of our human frailty and our personal and peculiar relation to the litigants, and, in our undue haste, arrive at conclusions which after deliberating, are not always justified by the records before us, thereby doing injustice and inflicting sometimes irreparable injury to a litigant, or the race to which he may belong.

But this should not be, at any time, among any people. Each person should be possessed of the spirit, "as we would other men to do — us, we should do to them likewise."—Luke 6:31. Therefore the words of Holy Writ should be in the minds of all, especially in the minds of those who are elevated to responsible positions, "ministers of God" (Romans 13:4,) to decide upon great issues, affecting not only individuals, but also races, nations, and peoples. The special admonition to all judges is: "Hear the causes between your brethren, and judge righteously between, every man and his brother and the stranger that is with him. Ye shall not respect persons in judgment, but ye shall hear the small as well as the great; ye shall not be afraid of the voice of man, for the judgment is God's." (Deut. 1 16.17) Therefore, take heed what ye do, for ye judge not for man, but for the Lord, who is with you in the judgment. Wherefore now let the fear of the Lord be upon you * * * for there is no iniquity with the Lord our God, nor respect of persons." (II Chron. 19:6.7) "Ye shall have one manner of law as well
121 for the stranger as for the one of your own country." (Levit. 24:22.) "Thus shall ye do in the fear of the Lord, faithfully and with a perfect heart. Therefore deal courageously and the Lord shall be with the good." (II Chron. 19:9, 11.) Because "of a truth I perceive that God is no respecter of persons, but in every nation he that feareth Hom and worketh righteousness is accepted with Him." (Acts 10:34, 35.)

Rehearing.

MaGerty vs. McGerty, 21 Ky. Law Reporter 1360; Martin v. Royse 21 Ky. Law Reporter 1353; Doty v. Trustees of Berea College, 16 Southwestern Reporter 268.

It is a fact unquestioned, known to all, that this Court is the final arbiter in this Commonwealth of what the law is, and the purpose of it is always, we believe, to mete out common justice "and that every person for an injury done him in his lands, goods, person or reputation shall have remedy, by due course of law, and right and justice administered without sale, denial or delay." (Bill of Rights of Ky. Sec. 14.) But, appellant respectfully states and believes that, on the contrary, in the case at bar, upon the whole record, the

Court has inadvertantly denied appellant this, and affirmed a decision which we think and feel assured that they will now likewise discover should have been reversed.

In conclusion, therefore, petitioner, humbly but respectfully states that he is simply contending and asking for, and demanding justice. He is confident that if this Honorable Court will take the record and properly compare it, with the decision already rendered,
122 that it itself will discover, reversible errors, expressly stated in the record, which have not been legally disposed of; and appellant is likewise confident that, if each judge of this Honorable Court will read the petition herein for rehearing, and note the errors therein stated, which he claims have not been legally passed upon by this Court and then read the decision, and thereafter compare it with the decision already rendered, the majority of them, if not the whole Court, will discover the injustice that has been done appellant by its decision in affirming the judgment of the trial court, and will also discover said reversible errors "affecting materially his substantial rights," not having been legally disposed of as aforesaid; and will then grant rehearing of this cause, and eventually reverse the judgment of the trial court, and remand the cause for a new trial. Thus thereby again demonstrating to all, that it is the established and ultimate purpose of this Court, always to determine and announce "what is the law" in this Commonwealth "to do justice" (Isaiah 56:1) and thereafter to see that *both* "both Law and Justice shall continue to go forth" from this Tribunal.

For this he prays.

J. ALEXANDER CHILES,
For Appellant.

C. J. BRONSTON,
ALLEN & DUNCAN,
B. E. SMITH,
Of Counsel.

123 *Authorities.*

Justice.

Deut. 1:16-7.
Levit. 24:22.
II Chron. 19:6-7-9-11 also 20:12.
Isaiah 56:1.
Luke 6:31.
Acts 10:34-35.
Romans 13:4.
Bill of Rights of Ky. Sec. 14.

Law.

Coleman v. Allen 26 Ky. 229.
Layson v. Galloway 7 Ky. 100.
McCoy v. Martin 34 Ky. 580.
Mobile & O. R. R. Co. v. Reaves 25 Ky. L. R. 2236.

Steele Heirs v. Logan 10 Ky. 394.
McGerty v. McGerty 21 Ky. L. R. 1360.
Martin v. Royse 21 Ky. L. R. 1353.
Doty v. Trustees of Berea College 16 S. W. 268.
Thompson v. Thompson 93 Ky. 435.
Mutual Life Ins. Co. 94 Ky. 253.
Civil Code Sec. 340.

124 And afterwards at a Court of Appeals held at the Capital at Frankfort on the 24th day of May, 1907, the following order was entered to-wit:

CHILES
v.
C. & O. RY. CO.

Fayette.

The Court being sufficiently advised, it is considered that the motion and petition of appellant for a rehearing herein, be and the same is hereby overruled.

Be it remembered that on the 23rd day of April, there was filed in the office of the Clerk of the Court of Appeals an Assignment of Error and which is hereto attached as follows to-wit:

125 Court of Appeals of Kentucky.

Assignment of Errors.

J. ALEXANDER CHILES, Appellant,
vs.
CHESAPEAKE AND OHIO RAILWAY COMPANY, Appellee.

Now comes the appellant, J. Alexander Chiles, the plaintiff in error, who was the plaintiff in Fayette Circuit Court, Kentucky, and respectfully submits, that, in the record, proceedings, decision, and final judgment of the Court of Appeals of the State of Kentucky, in the above entitled cause, there are manifest errors in these, to-wit:

1. That said Court of Appeals erred in holding and adjudging: That said Fayette Circuit Court, from whose judgment this appeal was prosecuted, to the said Court of Appeals, had committed no error against said plaintiff, in overruling and denying his Motion and Grounds for a New Trial.

2. That said Court of Appeals erred, in refusing to reverse said judgment of the said Fayette Circuit Court:

On account of its said ruling upon said Motion, or all, or some of the errors committed against said plaintiff in error in the progress of the trial of this cause, involving his rights as an interstate passenger.

3. The said Court of Appeals erred, in holding and adjudging that the said Chesapeake and Ohio Railway Company, appellee, the defendant in error, who was the defendant in said Fayette Circuit Court:

Within the State of Kentucky, independent of any statute, has the right to enforce rules and regulations, requiring colored passengers, although they may be interstate, and solely because of their color and race, to occupy coaches, or compartments in coaches, separate and distinct from those occupied by white passengers &c.

126 4. That said Court of Appeals erred, in holding and adjudging:

"That there is really no material issue of fact involved in the case &c.; but whether or not (said) plaintiff had been furnished accommodations substantially equal in quality, convenience, and comforts to those holding similar tickets, which issue was fairly submitted to the jury by the instructions of the Court, and their finding was, in effect, that no discrimination was made against (said) plaintiff, &c."

5. The said Court of Appeals erred, in refusing to hold and to adjudge the question, which was legally couched in the record, by said plaintiff, for its adjudication, to-wit: whether or not said Fayette Circuit Court had committed error, over the objection of plaintiff, to-wit:

By admitting incompetent and irrelevant testimony against said plaintiff, and refusing to admit competent and relevant testimony in behalf of said plaintiff.

6. The said Court of Appeals erred, in refusing to hold and adjudge the question, which was legally couched in the record, by said plaintiff, for its adjudication, to-wit: whether said Fayette Circuit Court erred, in refusing and declining:

To give the instructions asked for by said plaintiff, involving his right, as interstate commerce passenger, and failure of said Fayette Circuit Court to give the like instructions in its own instructions.

7. Said Court of Appeals erred, in refusing to hold and adjudge the question, which was legally couched in the record by plaintiff, for its adjudication, whether or not said Fayette Circuit Court:

Gave to the jury improper and erroneous instructions, etc.

8. Said Court of Appeals erred, in refusing to hold and
127 adjudge the question, which was legally couched in the record by plaintiff, for its adjudication, to-wit:

Whether or not the verdict in favor of the said defendant, which verdict was against said plaintiff, was the result of the bias and prejudice against the said plaintiff, growing out of his assertion and prosecution of this cause of action.

9. Said Court of Appeals erred, in refusing to legally and rightly consider, and overrule, and dispose of:

The said Petition for Rehearing, which expressly called its attention to the various questions of errors of law, which appellant had legally couched and presented in the record, to said Appellate Court,

for its adjudication, and which it had failed to legally consider in its opinion rendered.

10. Said Court of Appeals erred, in refusing to grant the Petition for Rehearing, when, from said Petition and the record, and the opinion of the said Court in the case:

There appeared manifest errors of law, affecting materially his substantial rights, and which said errors of law were legally couched in the record, and presented to the Court, for its adjudication, and had not been disposed of, according to due process of law.

11. Said Court of Appeals erred, in holding and affirming the decision of the said Fayette Circuit Court:

Before it had legally considered and disposed of every question of error of law, according to common justice, and the established law and the constitution of the State of Kentucky, and the Federal law and constitution of the United States, which said errors of law had been legally raised, and objected and excepted to, by said plaintiff, at the time, and decided against him, and legally couched in the record, and presented to the said Court, for its adjudication.

Each of which said eleven errors, committed against the said plaintiff in error, was and is contrary to clause three, section eight, article 1, of, and a denial and deprivation of his rights, contrary to section one, article fourteen, of the constitution of the United States.

Wherefore, said appellant, plaintiff in error, respectfully prays that a Writ of Error from the Supreme Court of the United States, may issue, to the Court of Appeals of the State of Kentucky; and further prays that the Supreme Court of the United States
128 will reverse the said final order and judgment of the Court of Appeals of the State of Kentucky, and order and direct that this said cause be remanded to the Fayette Circuit Court, of the State of Kentucky, with instructions to grant plaintiff in error the relief demanded by him in said cause; and for all such other relief as may be proper.

B. E. SMITH,
W. L. RICKS,
J. ALEXANDER CHILES,
ALBERT S. WHITE,
Att'ys for Pl'ff in Error.

Filed Apr. 23, 1908.
NAPIER ADAMS, *C. C. A.*

129 And on said date there was filed in the office of the Clerk of the Court of Appeals a petition for Writ of Error and which is attached hereto as follows:

130 Court of Appeals of Kentucky.

J. ALEXANDER CHILES, Appellant,
vs.
CHESAPEAKE AND OHIO RAILWAY COMPANY, Appellee.

Petition for Writ of Error.

The petitioner, J. Alexander Chiles, of Lexington, Kentucky, appellant herein, states that on April 16, 1907, the Court of Appeals of the State of Kentucky made and entered an order and judgment herein, in favor of the appellee, the Chesapeake and Ohio Railway Company, against the said petitioner, appellant herein, who was an interstate commerce passenger, on appellant's railway; that, afterwards, by an order of said Court of Appeals, duly made and entered, the said appellant was allowed to file a Petition for Rehearing of this cause, which Petition for Rehearing, thereafter, was duly filed, and, thereby, under the laws of the State of Kentucky, and the rules of the said Court, the said order and said judgment, made and entered April 16, 1907, were suspended, and they did not become final until the said Court of Appeals had acted upon the said Petition for Rehearing; that, afterwards, on the 24th day of May, 1907, the said Petition for Rehearing was overruled, by the said Court of Appeals, and its said order and judgment, made and entered, on the 16th day of April, 1907, then became final, and the mandate of the said Court of Appeals was on the 24th day of May, 1907, duly issued thereon; in which order and judgment, and the proceedings had prior to the issuing of said mandate on the 24th day of May, 1907, in this cause, certain errors were committed to the prejudice of this petitioner, affecting materially his substantial rights, all of
131 which, in detail, will appear from the Assignment of the Errors, which is filed with this Petition.

The said Court of Appeals of the State of Kentucky is, and was the highest Court of said State of Kentucky, in which a decision, in this suit and matter can and could be had; and it decided against the rights claimed by the petitioner and appellant, an interstate commerce passenger.

Wherefore said petitioner prays that a Writ of Error, out of and from the Supreme Court of the United States, may issue in this behalf to the Court of Appeals of the State of Kentucky, for the correction of the errors so complained of herein, and that a transcript of the said record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 23rd day of April, 1908.

J. ALEXANDER CHILES,
Petitioner.

B. E. SMITH,
W. L. RICKS,
J. ALEXANDER CHILES,
Atty's for said Petitioner.

The Writ of Error, as prayed for, in the foregoing Petition, is hereby allowed this 23d day of April, 1908, and the bond for that purpose is fixed at the sum of Two Hundred Dollars.

Dated at Frankfort, Kentucky, this 23d day of April, A. D. 1908.

W. E. SETTLE,
Acting Chief Justice of the Court of Appeals of Kentucky, in the Absence of Chief Justice O'Rear.

Filed Apr. 23, 1908.
NAPIER ADAMS, *C. C. A.*

132 And on said date there was filed in the office of the Clerk of the Court of Appeals a Writ of Error from the United States Supreme Court, and the order allowing same, and which is hereto attached and is as follows:

133 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Court of Appeals of the State of Kentucky, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Court of Appeals of the State of Kentucky, before you, or some of you, being the highest court of law or equity of the said state in which a decision could be had in the said suit between J. Alexander Chiles and Chesapeake and Ohio Railway Company wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such, their validity, or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said J. Alexander Chiles as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 23 day of May, 1908, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the said

Supreme Court, the 23 day of April, in the year of our Lord
134 1908, and of our Independence the 132nd, year.

[Seal 6th Circuit Court Eastern Ky. Dis., U. S. of America.]

CHAS. N. WIARD,
Clerk of the Circuit Court of the United States for the Eastern District of Kentucky at Frankfort.

Allowed by:
W. E. SETTLE,
Chief Justice Pro. Tem. Kentucky Court of Appeals.

Filed Apr. 23, 1908.
NAPIER ADAMS, *C. C. A.*

135 And on said date there was filed in the office of the Clerk of the Court of Appeals a Writ of Error Bond, and which is in words and figures as follows to-wit:

Know all men by these presents:

That we J. Alexander Chiles as principal, and B. E. Smith his surety, are held and firmly bound unto the Chesapeake and Ohio Railway Company in the full sum of Two Hundred Dollars, to be paid to the said Chesapeake and Ohio Railway Company, and its certain attorneys or assigns, to which payment well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators, jointly and severally by these presents.

Signed with our seals and dated this the 23 day of April 1908. Whereas lately at a term of the Court of Appeals of the Commonwealth of Kentucky, in a suit depending in said Court between J. Alexander Chiles Appellant versus the Chesapeake and Ohio Railway Company Appellee, a decision and final judgment was rendered against the said J. Alexander Chiles, and the said J. Alexander Chiles having obtained a Writ of Error and filed a copy thereof in the Clerk's office of the said Court of Appeals of Kentucky, to reverse the judgment of the aforesaid suit, and a citation di-
136 rected to the Chesapeake and Ohio Railway Company, citing them to be and appear at a Supreme Court of the United States within thirty days from date thereof.

Now the condition of the above obligation is such, that if the said J. Alexander Chiles shall prosecute said Writ of Error to effect and answer all damages and costs if they shall fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

J. ALEXANDER CHILES.
B. E. SMITH.

Signed sealed and delivered in presence of
W. B. O'CONNELL,
Deputy Clerk Court of Appeals.

Approved by

W. E. SETTLE,
Acting Chief Justice of the Court of Appeals of the Commonwealth of Kentucky.

137 And afterwards on the 28th day of April, 1908 there was filed in the office of the Clerk of the Court of Appeals, the original citation, and proof of service endorsed thereon, and which is hereto attached, and is as follows:

138 UNITED STATES OF AMERICA, *ss:*

To the Chesapeake and Ohio Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, with- thirty (30) days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Court of Appeals of the State of Kentucky, wherein J. Alexander Chiles is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 23rd day of April, in the year of our Lord one thousand nine hundred and eight and of our Independence the 132nd, year.

W. E. SETTLE,
Chief Justice Pro. Tem. Kentucky Court of Appeals.

Service of copy of the above acknowledged this 27th day of April, 1908.

JNO. T. SHELBY,
Counsel for Chesapeake and Ohio Railway Co.

[Endorsed]: Filed Apr. 28, 1908. Napier Adams, C. C. A.

139 COMMONWEALTH OF KENTUCKY,
The Court of Appeals:

In obedience to the commands of the within Writ of Error, I hereby transmit to the United States Supreme Court, a complete copy of the entire transcript of record, with all things touching the same.

In testimony whereof I have hereunto set my hand and affixed my official seal. Done at the Capitol at Frankfort on this the 2nd day of May A. D. 1908.

[Seal Kentucky Court of Appeals.]

NAPIER ADAMS,
Clerk of the Court of Appeals of Kentucky.
By W. B. O'CONNELL,
Deputy Clerk.

Endorsed on cover: File No. 21,165. Kentucky Court of Appeals. Term No. 158. J. Alexander Chiles, Plaintiff in Error, vs. Chesapeake and Ohio Railway Company. Filed May 9, 1908. File No. 21,165.

FEB 7 1910
JAMES H. McKENN

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1909

No. 158

J. ALEXANDER CHILES, Plaintiff in Error,

vs.

CHESAPEAKE AND OHIO RAILWAY COMPANY, Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR ON MOTION TO DISMISS

B. E SMITH,
W. L. RICKS,
ALBERT S. WHITE,
J. ALEXANDER CHILES,
Counsel for Plaintiff in Error

James E. Hughes, Printer, Lexington, Ky.

21,165